DECODING TAX FINE-PRINT FINANCE BILL, 2022

VAISH ASSOCIATES ADVOCATES
ESTD. 1971

SEQUENCE OF TOPICS

RATES OF INCOME-TAX

Changes in Tax Rates

- **No change** in tax rates (normal or special), rates of surcharge (except discussed below) or education cess has been proposed.
- Rate of surcharge in case of dividend income, short-term capital gains covered u/s 111A (equity shares or units of equity-oriented funds), and **long-term capital gains** covered u/s 112 (any asset) and 112A (equity shares or units of equity-oriented funds) is **restricted to maximum of 15%**
- Previously, the aforesaid cap on surcharge was not applicable for LTCG other than those covered u/s 112A.
- Illustratively, tax on long-term capital gains has been reduced from 28.496% to 23.92% for individuals falling in highest slab of surcharge.

Changes in Tax Rates

Re: Changes in rates of cooperative society

- Basis tax rate under normal provisions in case of co-operative society is unchanged. [Rs.3000 + 30% on income exceeding Rs,20,000]. Changes are tabulated hereunder:

	Existing (AY 2022-23)	Proposed (AY 2023-24)
Surcharge where income >1 crore but <= 10 crores	12%	7%
Surcharge where income >10 crores	12%	12%
Rate of Alternate Minimum Tax (u/s 115JC)	18.5%	15%

Withdrawal of concessional rate of taxation on dividend income under section 115BBD

[Clause 27] **(w.e.f. 01.04.2023)**

- Section 115BBD of the Act provides for a concessional rate of tax of 15 % on the dividend income received by an Indian company from a specified foreign company in which the said Indian company holds 26 % shareholding

- Finance Act, 2020 abolished the dividend distribution tax provided in section 115-O of the Act to, inter-alia, provide that dividend shall be taxed in the hands of the shareholder at applicable tax rates plus surcharge and cess.

- In order to provide parity in the tax treatment in case of dividends received by Indian companies from specified foreign companies qua the domestic companies, it is proposed that section 115BBD of the Act shall not apply from assessment year 2023-24 onwards

Withdrawal of concessional rate of taxation on dividend income under section 115BBD

Comments

- Companies such as TCS and Infosys would be adversely impacted since dividends from their specified foreign companies will be taxed at the applicable corporate tax rate and not @ 15%

COMPUTATION OF INCOME UNDER THE HEAD BUSINESS OR PROFESSION

Clarification regarding treatment of Cess and Surcharge

[Clause 13] **(w.r.e.f. 01.04.2005)**

- Section 40(a)(ii) of the Act provides that any sum paid on account of any rate or tax levied on the profits or gains of any business or profession ("PGBP") or assessed at a proportion of, or otherwise on the basis of, any such profits or gains shall not be deducted in computing the income chargeable under the head PGBP.

- In the case of Sesa Goa Ltd vs JCIT: [2020] 423 ITR 426 (Bom) and Chambal Fertilizers & Chemicals Ltd vs JCIT: 107 taxmann.com 484 (Raj), the High Courts, relying on CBDT Circular No.91/58/66-ITJ(19) dated 18.05.1967, held that 'education cess' can be claimed as an allowable deduction while computing the income chargeable under the head PGBP.

- Various benches of the Tribunal have followed the aforesaid High Court decisions.

Clarification regarding treatment of Cess and Surcharge

[Clause 13] **(w.r.e.f. 01.04.2005)**

- In the case of M/s. Kanoria Chemicals & Industries Ltd (ITA No.2184/Kol/2018), Kolkata Bench of the Tribunal held that "cess" is not to be allowed as deduction on the ground that "education cess" was introduced as an "additional surcharge" by Finance Act, 2004 and subsequently by Finance Act, 2011.

- Placing reliance on the decision of the Supreme Court in the case of CIT vs K Srinivasan: [1972] 83 ITR 346 (SC) wherein it was held that "additional surcharge" is part of income-tax, the Tribunal disallowed deduction of education cess holding that the decision of the apex Court prevails over that of the High Courts.

- It has been similarly held by the Chandigarh Bench of the Tribunal in the case of GlaxoSmithKline Asia Pvt Ltd vs DCIT: ITA No.2453/Del/2016 (Chd Trib.).

Clarification regarding treatment of Cess and Surcharge

[Clause 13] **(w.r.e.f. 01.04.2005)**

- It is proposed to insert an Explanation retrospectively w.r.e.f. 01.04.2005 to section 40(a)(ii) of the Act to clarify that for the purposes of this sub-clause, the term "tax" includes and shall be deemed to have always included any surcharge or cess, by whatever name called, on such tax.

- The rationale behind the retrospective amendment is stated in the Memorandum to be the following:
  - 'Cess' is imposed both by the Central Government and by various State Governments. CBDT Circular *(supra)* refers to "Cess" imposed by the State Government which is actually of the nature of "Cess"; whereas "education cess" is in the nature of "Additional Surcharge" being termed as "Cess" in the relevant Finance Act; allowability of which has been rejected by the apex Court in the case of K Srinivasan *(supra);*
  - The High Court judgments *(supra)* are *per* incuriam as they did not consider the apex Court judgment *(supra)* and are also against the intention of the Legislature.

Clarification regarding treatment of Cess and Surcharge

[Clause 13] **(w.r.e.f. 01.04.2005)**

Comments

- The retrospective amendment will bring quietus to the issue which is pending in many appeals/ assessments, mostly in the form of additional ground/ claim.

- Having regard to the retrospective amendment, it would have been appropriate for the Legislature to have simultaneously clarified that penalty shall not be levied wherever deduction had been claimed in the income-tax return, considering favourable decisions of the High Courts *(supra)* and various Benches of the Tribunal.

Section 14A - In the absence of exempt income

[Clause 9] **(w.e.f. 01.04.2022)**

- Under the existing provisions of section 14A of the Act no deduction is admissible in respect of expenditure, which has proximate nexus with income, which does not form part of total income under the Act.

- There has been an ongoing controversy on the issue of whether disallowance under section 14A of the Act can be made in cases where no exempt income has accrued, arisen or received by the assessee during an assessment year.

- The Supreme Court in the case of **CIT vs. Walfort Share & Stock Brokers: 326 ITR 1**, held that there must be a proximate relationship of expenditure with exempt income, for the purposes of making disallowance under section 14A of the Act [also Godrej & Boyce Manufacturing Company Ltd.:394 ITR 449 (SC) and Maxopp Investment Ltd: 402 ITR 640 (SC)].

Section 14A - In the absence of exempt income

[Clause 9] **(w.e.f. 01.04.2022)**

- The Courts have, in plethora of cases held that the existence of exempt income, is sine qua non for applying provisions of section 14A of the Act [Refer: CIT vs. Holcim India Private Limited: 272 CTR 282 (Del) and others].

- In this context, the Courts laid specific emphasis on the words *"in relation to income which does not form part of the total income under this Act"* used in the section 14A(1) of the Act which indicates a correlation between the exempt income earned in the assessment year and the expenditure incurred to earn it.

- The CBDT vide Circular No. 5/2014, dated 11/02/2014, however, provided that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

Section 14A - In the absence of exempt income

[Clause 9] **(w.e.f. 01.04.2022)**

- Even after considering the aforesaid Circular, the Courts held that if there is no exempt income during a given previous year, no disallowance under section 14A of the Act can be made for that year [Refer: IL & FS Energy Development Company Ltd.: 297 CTR 452 (Del), Caraf Builders & Constructions (P.) Ltd.: 261 Taxman 47 (Del.)- SLP dismissed in 268 Taxman 317 (SC) and Chettinad Logistics (P.) Ltd.: 248 Taxman 55 (Mad) – SLP dismissed].

- It is now proposed to amend section 14A of the Act by way of insertion of Explanation thereto to clarify that the said section shall apply and shall be deemed to have always applied in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

Section 14A - In the absence of exempt income

[Clause 9] **(w.e.f. 01.04.2022)**

- It is also proposed to amend sub-section (1) of section 14A, to include a non-obstante clause in respect of other provisions of the Act and provide that no deduction shall be allowed in relation to exempt income, notwithstanding anything to the contrary contained in this Act.

Comments/Observation

- Whether proposed amendments applicable from 1st April, 2022, can be applied to earlier assessment years?
  a) An enactment is to be construed as prospective, unless the contrary appears from the express language or by necessary implication [CIT vs. Vatika Township Pvt. Ltd.: 367 ITR 466 (SC)]
  b) Merely because the new provision has been inserted through explanation which uses the phrase "for the removal of doubts", the same does not *ipso facto* make the substantive amendment to be clarificatory in nature and have retrospective applicability [Sedco Forex International Drill Inc.: 279 ITR 310 (SC)]
  c) Any amendment having the effect of modifying the manner in which tax is being charged/computed, in the absence of express stipulation or necessary implication, only have prospective operation [CIT vs. Essar Teleholdings Ltd : 401 ITR 445]

Section 14A - In the absence of exempt income

[Clause 9] **(w.e.f. 01.04.2022)**

- No amendment in sub-section (1) of section 14A of the Act – Still provides for disallowance of expenditure incurred *"in relation to income which does not form part of the total income under this Act"*

- Can Explanation expand the scope of main provision?
  - Explanation is introduced by Legislature for clarifying some doubts or removing confusion which may possibly arise from the existing provisions. Therefore, an Explanation would not expand the scope of the main provision [Katira Construction Ltd. vs. UoI: 352 ITR 513 (Guj)].
  - A section has to be understood and read hand in hand with the Explanation, which is only to support the main provision, like an example does not explain any situation [N. Govindaraju vs. ITO :377 ITR 243(Kar)].

- Whether for computing disallowance under section 14A, only investments yielding exempt income is to be considered or the entire investments shall have to be considered? [refer ACB India Ltd.: 374 ITR 108 (Del)].

Section 14A - In the absence of exempt income

[Clause 9] **(w.e.f. 01.04.2022)**

- Whether as a consequence of the proposed amendment, disallowance under section 14A of the Act can exceed the exempt income earned during a given previous year?

- Can disallowance be made under section 14A even before accrual of income in the hands of the assessee?

- Can disallowance be made under section 14A of the Act when there is remote possibility of accrual of any income from the investment in the present or future year(s), more so in the light of the present era of dividend no longer being an exempt income?

- The proposed amendment seeks to unsettle the legal position settled unanimously in plethora of judicial precedents of almost all the High Courts across the Country and various benches of the Tribunal.

Section 37 – Allowability of Expenditure

[Clause 12] **(w.e.f. 01.04.2022)**

- Section 37 of the Act provides for allowability of revenue and non-personal expenditure laid out or expended wholly and exclusively for the purposes of business or profession.

- Explanation 1 to section 37(1), prohibits deduction of expenditure incurred for any purpose, which is an offence or is prohibited by any law, even if it meets the conditions prescribed under section 37(1) of the Act.

- In the recent past, there has been a lot of litigation on the issue of allowability of deduction in respect certain 'freebies' provided by pharma companies to doctors/medical practitioners in view of the Code of Ethics notified by The Medical Council of India (MCI).

- In line with the aforesaid code, the CBDT vide Circular 5/2012, provided that expenditure incurred on such freebies would be inadmissible under section 37 of the Act.

Section 37 – Allowability of Expenditure

[Clause 12] **(w.e.f. 01.04.2022)**

- There was a dichotomy in the views expressed by various Courts/Tribunals on the issue of allowability of such expenditure incurred on gifts, travel assistance or hospitality by pharma companies on behalf of medical practitioners.

- In various decisions rendered by the Tribunal, the expenditure was held to be allowable as deduction under section 37 of the Act on the ground that the MCI guidelines bind only the medical professionals and not the pharmaceutical companies [Refer: DCIT vs. PHL Pharma (P) Ltd.: 184 TTJ 1 (Mum)].

- Explanation 3 is now proposed to be inserted in section 37(1) of the Act to end the dissonance and explicitly provide that "expenditure incurred for any purpose which is an offence or which is prohibited by law" would inter-alia include distribution of such freebies.

Section 37 – Allowability of Expenditure

[Clause 12] **(w.e.f. 01.04.2022)**

- The proposed Explanation also seeks to include within its ambit expenditure incurred:
  a) for any purpose which is an offence or which is prohibited by any law in force in India or outside India;
  b) to provide any benefit or perquisite, …… to a person …… in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing conduct of such person;
  c) to compound an offence under any law in force in India or outside India.

- In terms of the proposed amendment, amount paid towards compounding of offence under any law, in India or outside India will not be admissible as business deduction under section 37(1) of the Act.

Section 37 – Allowability of Expenditure

[Clause 12] **(w.e.f. 01.04.2022)**

Comments/Observation

- The term "benefit or perquisite" has not been explicitly defined.
- Whether expenditure can be disallowed even in the absence of any allegation of violation by the MCI?
- Will there be consequential addition of sum equivalent to the value of freebies in the hands of the medical practitioners/recipients as well (earlier provided in CBDT Circular 5/2012)
- Whether Settlement Agreements and Consent Decrees would constitute "compounding of offence"?

Section 43B – Deduction on payment of Interest

[Clause 14] **(w.e.f. 01.04.2023)**

- Section 43B of the Act provides for certain deductions to be allowed only on actual payment.

- Explanation 3C, 3CA and 3D to section 43B of the Act provides for deduction of interest payable on loan or borrowing from specified financial institution/NBFC/scheduled bank or a co-operative bank, only if such interest has been actually paid.

- The aforesaid Explanation(s) as it stands today, explicitly provides that where any interest referred to in these clauses has been converted into a loan or borrowing or advance, it shall not be deemed to have been actually paid.

- The Finance Bill now proposes to further clarify that conversion of outstanding interest liability into debentures or any other instrument to defer the liability to a future date shall not be regarded as actual payment and cannot be claimed as deduction under Section 43B of the Act.

Section 43B – Deduction on payment of Interest

[Clause 14] **(w.e.f. 01.04.2022)**

- In effect, any interest referred to in these clauses which has been converted into a loan or borrowing or advance as settlement of such interest dues shall not be deemed to have been actually paid.

- The proposed amendment seeks to nullify the decision of the Supreme Court in the case of **M.M. Aqua Technologies Ltd. vs. CIT: 436 ITR 582**, wherein issuance of debentures in lieu of interest liability was held to be actual discharge of liability and allowable as deduction under section 43B of the Act.

SCHEME FOR TAXATION OF VIRTUAL DIGITAL ASSETS – SECTION 115BBH

Scheme for taxation of virtual digital assets – Section 115BBH

[Clauses 3, 16, 28 and 59] **(w.e.f. 01.04.2023)**

- Virtual digital assets (VDA) have gained tremendous popularity in recent times and the volumes of trading in such digital assets has increased substantially across the globe including in India
- A market is emerging where payment for the transfer of a VDA can be made through another such asset.
- Presently, total market cap of VCs is **USD 1.66 trillion** out of which Bitcoin's market cap is **USD 710 billion**.
- As per media reports, India's largest crypto currency exchange (WazirX) registered an annual trade of over **USD 43 billion** during financial year 2020-21

Scheme for taxation of virtual digital assets – Section 115BBH

- Accordingly the Finance Bill, 2022 has proposed a new scheme to provide for taxation of such VDA
- Section 115BBH is proposed to be inserted to provide that where the total income of an assessee includes any income from transfer of any VDA, the income tax on such income shall be payable @ 30%
- Section 115BBH(2) seeks to provide that:
  - no deduction in respect of any expenditure (other than cost of acquisition) shall be allowed in computing the income from transfer of such VDA
  - No set off of any loss shall be allowed to the assessee under any provision of the Act in computing income from transfer of VDA
  - No set off of loss from transfer of VDA shall be allowed against income computed under any other provision of the Act
  - Loss on transfer of VDA shall not be allowed to be carried forward to succeeding assessment years

Scheme for taxation of virtual digital assets - Section 2(47A)

"Virtual digital asset" means—

- any information or code or number or token (not being Indian currency or foreign currency)
  - generated through cryptographic means
  - providing a digital representation of value exchanged with or without consideration
  - with the promise or representation of having inherent value, or functions as a store of value including its use in any financial transaction or investment but not limited to investment scheme and
  - can be transferred stored or traded electronically

- a non-fungible token or any other token of similar nature, by whatever name called;

Scheme for taxation of virtual digital assets - Section 2(47A)

- any other digital asset, as the Central Government may, by notification specify

- “non-fungible token” means such digital asset as the Central Government may specify by notification

Scheme for taxation of virtual digital assets - Section 194S

(w.e.f. 01.07.2022)

- In order to widen the tax base from the transactions carried out in relation to VDA, it is proposed to insert section 194S to provide for deduction of tax on payment for transfer of VDA to a resident @ 1% of such sum

- However, in following cases person responsible for paying such consideration shall before releasing the consideration ensure that tax has been paid in respect of:

  - consideration for transfer of VDA is **wholly in kind or in exchange of another VDA** where there is no part in cash; or

  - consideration for transfer of VDA is **partly in cash and partly in kind** but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer

Scheme for taxation of virtual digital assets - Section 194S

- Section 194S(3) provides that no tax is to be deducted in case:
  - the payer is the specified person and the value or the aggregate of such value of consideration to a resident is less than Rs. 50,000 during the financial year.
  - In any other case, the said limit is proposed to be Rs. 10,000 during the financial year.

- Specified person means a person:
  - being an individual or HUF whose turnover from business does not exceed Rs. 1 crore or in case of profession Rs. 50 lakh, during the financial year immediately preceding the financial year in which the virtual digital asset is transferred;
  - An individual or HUF not having any income under the head "Profits and gains of business or profession

Scheme for taxation of virtual digital assets - Section 194S

- If tax has been deducted under section 194S, then no tax is to be collected or deducted in respect of the said transaction under any other provision of Chapter XVII of the Act

- If any sum paid for transfer of virtual digital asset is credited to any "Suspense Account" or any other account, in the books of account of the person liable to pay such sum,
  - such credit of the sum shall be deemed to be the credit of such sum to the account of the payee and provisions of section 194S shall apply

- It is proposed to empower the Board to issue guidelines, with the prior approval of the Central Government, to remove any difficulty arising in giving effect to provisions of section 194S

Scheme for taxation of virtual digital assets - Section 194S

- Every guideline issued by the Board under section 194S shall be laid before each House of Parliament, and shall be binding on the tax authorities and on the assessee

- Provisions of section 194S shall supersede:
  - Provisions of section 194-O of the Act which deals with deduction of tax at source in respect of sale of goods or provision of services of an e-commerce participant facilitated by an e-commerce operator through its digital or electronic facility

Scheme for taxation of virtual digital assets - Section 56 of the Act

(w.e.f. 01.04.2023)

- In order to provide for taxing the gifting of VDA, it is proposed to amend Explanation to clause (x) of sub-section (2) of section 56 of the Act to inter-alia, provide that for the purpose of the said clause, the expression “property” shall include VDA

Issues??

Though guidelines from the government are awaited but the following issues may be further clarity

- Presently, majority of the VDA transactions in India are undertaken on an exchange/ platform such as WazirX, Zebpay etc. where the buyer and seller are unknown

- Similarly in case of transaction of shares on recognised stock exchange in India (NSE/ BSE), the parties to a transaction are not known to each other and all transactions are settled through the depository

- An issue may arise as to whether provisions of section 194S have to be complied by the exchange/ platform or by the person trading in the VDA through such exchange

Issues??

- It may not be practical to fasten TDS liability on the buyer/trader since he would not know the detail of the sellers as all transactions in VDA are encrypted to maintain privacy

- The government may clarify that the TDS liability may fall on the shoulders of the exchange rather than the investor/ trader to mitigate the compliances such as obtaining TAN, filing of TDS returns etc. on individual traders

- Alternately, a tax similar to Securities Transaction Tax (STT) levied on transfer of shares may be considered

Issues??

- In case of exchange of one VDA for another (bitcoin used to buy/converted into Ethereum), then how would the provisions of section 194S be applicable in following cases:
  - If the transaction is undertaken through a DVA platform/exchange
  - If the transaction is undertaken between two persons privately using their DVA wallets instead of a trading platform, then the burden will fall on which party?
- If a transaction of exchange is undertaken, how will the FMV be determined?
  - It may be noted that price at which a DVA is traded on a platform varies across the globe. For instance, price at which Bitcoin is traded in India is 5-10% lower than platforms abroad (e.g. Binance)

Issues??

- Presently there is no provision for withholding tax in case of transfer of VDA by a person resident in India to a wallet owned by a non-resident outside India

- In case of gift to a person other than a relative, FMV shall be deemed to be the income of the recipient of the VDA

  - Government may lay down rules for determining FMV of the VDA in such cases

- In case of gift of DVA, there may be double taxation –
  - First - when the donee receives VDA as a gift and
  - Second - when he sells the VDA since the cost of acquisition is Nil

Issues??

- VDA is not treated as a capital asset, therefore, reduction of surcharge on capital gains to a maximum of 15% by Finance Bill, 2022 will not be extended to profits on sale of VDA.
  - In other words, if the income of a person exceeds Rs. 5 crore then the effective tax rate may be 43%
- Considering that cost of one bitcoin is more than Rs. 30 lakh, basic threshold exemption limit of Rs. 50,000 for applicability of TDS provisions is quite low
- In case of VDA miners who invest heavily in hardware and electricity so as to mine the VDA, no deduction in respect of any expenditure other than the cost of acquisition shall be allowed

Section 68- Requirement to prove source of source for loans and borrowings

[Clause 17] **(w.e.f. 01.04.2023)**

- Presently, the requirement to provide/prove source of funds in the hand creditors/ investor is only applicable in case of sum received as share capital, share premium or share application money [proviso to section 68].

- Said requirement to substantiate source of source is not applicable for other credits such as loans/ borrowings [refer *CIT v. Gagandeep Infrastructure (P.) Ltd.: 394 ITR 680 (Bom), CIT v. Divine Leasing & Finance Limited (2008) 299 ITR 268 (Del), ITO v. Vijay Dwellers P. Ltd: ITA No.141/Mum/2018 (Mum Trib.)]*

Section 68- Requirement to prove source of source for loans and borrowings

[Clause 17] **(w.e.f. 01.04.2023)**

- Amendment is proposed in the aforesaid proviso to section 68 to provide that the nature and source of any sum, whether in form of loan or borrowing, or any other liability credited in the books of an assessee shall be treated as explained only if the source is also explained in the hands of the creditor or entry provider to the satisfaction of the AO

- Simply stating, requirement/ onus to prove "source of source" is extended in case of loans and borrowings also

Set off of loss in search cases

[Clause 19] **(w.e.f. 01.04.2022)**

- The existing provisions of Chapter VI of the Act dealing with aggregation of income and set off or carry forward of loss have no specific restrictions to disallow set-off of losses against "undisclosed income" detected during the course of search or survey proceedings.
- Presently, no deduction or allowance of set off of losses is allowed for incomes falling in section 68 (cash credits), section 69 (unexplained investments), etc., due to specific restriction in section 115BBE.
- Consequently, any 'undisclosed income' detected during search & seizure or survey or requisition proceedings, but not falling in/ covered by section 115BBE, is presently eligible for set off.
- It is accordingly proposed to impose similar bar on set off of losses against undisclosed income by insertion of section 79A in the Act.

Set off of loss in search cases

[Clause 19] **(w.e.f. 01.04.2022)**

- The proposed section provides that the benefit of set off of any loss, whether brought forward or otherwise, or unabsorbed depreciation shall not be allowed to the assessee against undisclosed income detected consequent to a search under section 132 or a requisition made under section 132A or a survey conducted under section 133A [other than under section 133A(2A)].

Comments / Observations :

- The above proposal has been brought in to ensure that proper tax is paid on income detected in a search or survey and discourage assessees against tax evasion. The proposed amendment would, thus, result in increased cash outflow for assessee despite having available losses or unabsorbed depreciation.

Set off of loss in search cases

[Clause 19] **(w.e.f. 01.04.2022)**

- For example, undisclosed business income on account of undisclosed trading transactions detected during search, not covered by section 115BBE, is presently eligible for set off against carried forward losses. The proposed amendment shall result in denial of such set off.

- The proposed amendment would also result in increase in consequential interest liability.

- The proposed restriction is in line with provisions in Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and The Voluntary Disclosure Of Income Scheme, 1997 and similar other provisions in the Act specifically barring set off of existing losses.

CAPITAL GAINS AND BUSINESS RE-ORGANIZATION

Reduction of Goodwill is “transfer”

[Clause 15] **(w.e.f. 01.04.2021)**

Explanation added in section 50 of the IT Act

- The Finance Act, 2021, had amended the various provisions of the IT Act to prohibit the deduction for depreciation on goodwill. Section 2(11), which defines the term “block of assets” was amended to remove the goodwill of business or profession from the ambit of a block of asset.

- Consequential amendment was carried out in section 50 of the Act by insertion of a proviso to clause (2) to provide that in case where goodwill of a business or profession forms part of a block of asset for the assessment year beginning on the 1st day of April, 2020 and depreciation thereon has been obtained by the assessee under the IT Act, the written down value (WDV) of that block of asset and short-term capital gain, if any, shall be determined in such manner prescribed.

- The CBDT was empowered to specify the manner in which the WDV and capital gains are to be computed where goodwill forms part of a block of assets. In the exercise of such powers, CBDT inserted new Rule 8AC to the IT Rules.

Reduction of Goodwill is “transfer”

- The Rule provides that where the goodwill of the business or profession was the only asset or one of the assets in the block of asset “intangible” for which the assessee obtained depreciation in the assessment year beginning on 01-04-2020, the WDV of the said block of an asset for the previous year relevant to the assessment year commencing on 01-04-2021 shall be determined in the following steps:

Particulars	Amount (in cr)
Determine Opening WDV of a block of “intangible” as on 01-04-2020 (A)	1,000
Add : Actual cost of the asset (other than goodwill) acquired during the previous (B)	500
Reduce : Money payable in respect of any asset, sold, destroyed, discarded, or demolished during the previous year with the scrap value, if any (C)	50
Reduce : WDV of the assets, transferred under “slump sale” (D)	20
Reduce : Actual cost of goodwill after reducing depreciation allowed (E)	200
WDV of the block of assets for the previous year 2020-21	1,230

Reduction of Goodwill is “transfer”

[Clause 15] **(w.e.f. 01.04.2021)**

❖ The Rule further provides for computation of STCG in the following manner:

Situations	Actual cost of goodwill after reducing depreciation		Opening WDV + Actual cost of asset acquired during the year	STCG
I	200	<	1500	No STCG
II	1000	>	700	STCG=300
III**	700	=	700	No STCG

*Note : ** If goodwill of the business or profession was the only asset in the block of asset for which assessee had obtained depreciation in the assessment year 2020-21, and the block of asset ceases to exist on account of there being no further asset acquired during the assessment year 2021-22 in that block, there will not be any capital gains or loss on account of the block of asset having ceased to exist.*

Reduction of Goodwill is “transfer”

[Clause 15] **(w.e.f. 01.04.2021)**

Explanation added in section 50 of the IT Act

- A further consequential amendment is proposed to clarify that for the purposes of section 50 of the IT Act, reduction of the amount of goodwill from the block of asset in accordance with section 43(6)(c)(ii)(B) shall be deemed to be transfer.

- The aforesaid amendment is clarificatory in nature.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Amendment in section 170

- Section 170 of the IT Act, *inter-alia*, governs the procedure of taxation in case of succession to business in the event of reorganization or restructuring of the business.

- Sub-section (1) of the said section provides that the predecessor shall be assessed in respect of the income upto the date of succession and the successor shall be assessed in respect of the income of the previous year after the date of succession.

- It is proposed to insert a new sub-section (2A) to provide a deeming provision that the assessment/reassessment or other proceedings made on the predecessor during the course of pendency of business reorganisation, shall be deemed to have been made on the successor.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Amendment in section 170

- An Explanation is proposed to be inserted to define the expressions,—

(i) "business reorganisation" to mean reorganisation of business involving the amalgamation or de-merger or merger of business of one or more persons; and

(ii) "pendency" to mean the **period commencing from the date of filing of application** for such reorganisation of business before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016 **and ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority**, as the case may be, **is received by the Principal Commissioner or the Commissioner**.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments / Observations

- At the outset, it may be pointed out that the company undergoing business restructuring (say, amalgamation) becomes non-existent from the date the order of NCLT/ Court becomes effective and not with effect from the appointed date. This is for the reason that the name of the company is struck off upon the order becoming effective.

- To that extent, the proposed amendment covering the period commencing from the date of filing of scheme/ application to the date of passing of the order by the competent authority seems to be more of clarificatory in nature; not nullifying the settled position of law that assessment cannot be made on a company whose name has been struck off from the register of companies [refer : CIT v. Express Newspapers Limited: 40 ITR 38 (Mad), which is affirmed by the Supreme Court vide decision reported as 53 ITR 250 and Spice Infotainment Ltd. vs. CIT (2012) 247 CTR 500 (Del) affirmed by the apex Court in 12 ITR-OL 134 (SC)]]

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments / Observations

- The apex Court in the case of **Pr. CIT vs. Maruti Suzuki India Ltd. (2019)** 416 ITR 613 (SC) held that the assessment order passed, in respect of the on-going assessment proceedings, post the effective date of amalgamation, in the name of the predecessor/ amalgamating entity was invalid.

- The proposed amendment now mandates specific intimation to the Tax Department. It may not now be available to argue that the Department was, in view of initial notice being issued by the Court before the scheme, deemed to be aware about the amalgamation.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments / Observations

- Explaining the aforesaid illustratively, assuming that the amalgamation order is passed by NCLT on April 2, 2022, and the said order is filed with PCIT on 2nd July, 2022 and assessment order is passed by AO in May, 2022 in the name of the amalgamating company.

- In view of the legal position, one would have contended that in view the ratio emanating from Maruti Suzuki India Ltd. (supra), the said order passed in the name of a non-existent company is invalid.

- However, in view of the proposed amendment, having regard to the fact that the intimation was given to the PCIT in July, 2022, the said order would be deemed to be passed/ made on the amalgamated company.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Insertion of new section 170A

- It is also proposed to insert a new section 170A to give effect to the order of the Tribunal or Court in respect of business reorganisation having impact on the income tax return filed by the successor in the preceding year(s) .

- Notwithstanding the provisions of section 139 of the IT Act which provides for the due date for filing the income tax return, the new section is proposed to permit filing of the modified return by the successor company in case of business reorganisation upon receipt of the order of High Court or Tribunal or an adjudicating authority, **within a period of six months from the date of such order** in such form and manner as may be prescribed.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments/ Observations

- Earlier, once time limit prescribed under section 139(5) for e-filing revised return elapsed, there was no specific mechanism of filing revised return of income to give effect to the order of NCLT/Court and the amalgamated/ resulting entity had to manually prepare and furnish revised return of income before the assessing officer. In many cases, cognizance was, however, not given to such revised return.

- Recently, the **Supreme Court** in the case of **Dalmia Power Ltd. vs. ACIT: 420 ITR 339** held where the assessee has restructured its business with the prior approval and sanction of the NCLT, the assessing officer was required to accept the revised return of income even after the due date prescribed under section 139(5). The ratio laid by apex Court is now proposed to be enacted in the statute.

- This is a welcome amendment since it gives statutory recognition to the right of the taxpayer to file revised return, that too, during Covid when business reorganisation are unduly delayed and the normal timelines for filing the revised return have already elapsed.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Insertion of new section 156A

- It is proposed to insert a new section 156A mandating the assessing officer to modify and **reduce** demand raised on account of any tax, interest, penalty, fine or any other sum in notice issued under section 156 **as a result of an order** of an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, **in conformity with such order** and to thereafter serve on a notice of demand specifying the sum payable, if any, which shall be deemed to be a notice under section 156 of the IT Act.

- It is also proposed to provide that where the order referred above is modified further by the National Company Law Appellate Tribunal or the Supreme Court, as the case may be, the modified notice of demand issued by the Assessing Officer shall be revised accordingly.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments/ Observations

- Section 31(1) of the Insolvency and Bankruptcy Code, 2016 ("**IBC**") provides that the resolution plan shall be binding on corporate debtor, its employees, members, creditors and other stakeholders involved in the plan. Vide section 7 of IBC (Amendment) Act, 2019, it was amended to include the Central Government, any State Government or any local authority.

- Under IBC, various liabilities (including statutory liabilities) are discharged/ settled in terms of the approved resolution plan, resulting in consequent extinguishment of statutory liabilities.

- Recently, **Supreme Court** in the case of **Ghanashyam Mishra And Sons Private Limited v. Edelweiss Asset Reconstruction Company: CA No.8129 of 2019** held, *inter alia*, that all the dues owed to Central and State Government including dues to statutory authority, which do not form part of resolution plan, shall upon approval by the adjudicating authority (NCLT), stand extinguished and no proceeding in respect of such dues can be initiated/ continued.

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments/ Observations

- To the same effect are the following decisions which support the view that no tax liability for period prior to date of approval of resolution plan by NCLT could be recovered against the assessee :

  (i) Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta, 2019 SCC OnLine SC 1478 **(SC)**
  (ii) Ultra Tech Nathdwara Cement Limited, Division Bench Civil Writ Petition No. 9480 of 2019 **(Raj. HC)**
  (iii) Ruchi Soya Industries Limited v. The Joint Commissioner of State Tax, Commercial Taxes Department, Bhabua Circle, I.A. No. 978 of 2020 IN C.P.(IB)- 1371 and 1372/(MB)/2017 (**NCLT)**

Amendment related to successor entity subsequent to business reorganization

[Clauses 50, 53 and 54] **(w.e.f. 01.04.2022)**

Comments/ Observations

- Presently, no procedure or mechanism was provided in the IT Act to reduce such demands from the outstanding demand register, resulting in the assessing officer taking measures to recover the outstanding demand, despite the Central Government (including the Income Tax Department) being bound by the approved resolution plan.

- To remove the anomaly and to give effect to the orders of the competent authority, it is proposed to insert the new section directing the assessing officer to modify the demands basis the order passed by the competent authorities.

- The proposed amendment is likely to provide much needed relief to successful bidders attempting to revive the company and its business.

Facilitating strategic disinvestment of PSU

[Clause 18] **(w.e.f. 01.04.2022)**

Amendment in section 79 of the IT Act

- Section 79 of the IT Act provides that no loss incurred by a company, in which the public are not substantially interested, prior to the previous year in which a change in shareholding of such company took place, is allowed to be carried forward and set off against the income of that year unless, on the last day of the previous year, shares carrying not less than 51% of the voting power were beneficially held by the same persons who **beneficially held not less than 51% of the voting power as on the last day of the previous year(s) in which the loss was sustained**.

- It order to facilitate the strategic disinvestment of PSU, it is proposed to amend section 79 to exclude erstwhile PSU from the purview of the said section, subject to the condition that the ultimate holding company of such erstwhile PSU, immediately after the completion of strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, in aggregate, at least 51% of the voting power of the erstwhile PSU.

Facilitating strategic disinvestment of PSU

[Clause 18] **(w.e.f. 01.04.2022)**

Amendment in section 79 of the IT Act

- It is further proposed to provide that if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the provisions of section 79 shall apply for such previous year and subsequent previous years.

- The terms "erstwhile public sector company" and "strategic disinvestment" shall have the meaning assigned to in clause (ii) and (iii) of the Explanation to clause (d) of sub-section (1) of section 72A respectively.

Definition of “Slump sale”

[Clause 3] **(w.e.f. 01.04.2021)**

Amendment in section 2(42C) of the IT Act

- Presently, slump sale is defined in section 2(42C) of the IT Act, as transfer of one or more undertaking, by any means, for a lump sum consideration without values being assigned to individual assets and liabilities in such **sales**.

- Vide Finance Act, 2021, definition of “slump sale” was amended to expand its scope to cover all forms of transfer under slump sale. However, inadvertently, in the last sentence there is reference to the word “sales” instead of “transfer”.

- It is now proposed to carry out consequential amendment by amending the provision of clause (42C) of section 2 to substitute the word “sales” with the word “transfer”.

Bonus/ Dividend Stripping

[Clause 25] **(w.e.f. 01.04.2023)**

Amendment in section 94 of the IT Act

- Section 94 of the IT Act contains anti avoidance provisions to deal with transactions in securities and units of mutual fund which, *inter-alia*, include dividend stripping and bonus stripping.

- The extant provisions of section 94 are not applicable with respect to, -
  - **bonus stripping** undertaken in case of securities and units of Infrastructure Investment Trust (InvIT) or Real Estate Investment Trust (REIT) or Alternative Investment Funds (AIFs); and
  - **dividend stripping** undertaken in case of units of new pooled investment vehicles such as InvIT or REIT or AIFs.

- It is proposed to apply the aforesaid provisions of bonus stripping to securities as well. Explanation to the said section is also amended to include units of business trusts such as InvIT, REIT and AIF, within the definition of "units".

TAX INCENTIVES (COMPANIES/ IFSC/ START-UPS)

Tax Incentives to IFSC

[Clauses 4,16, and 23] **(w.e.f. 01.04.2023)**

Rationalisation of the provisions of section 10

- In order to further incentivize operations from IFSC, it is proposed to provide the following additional incentives:

  - Clause (4E) of section 10 is amended to extend the exemption to the income accrued or arisen to or received by a non-resident as a result of transfer of offshore derivative instruments or over-the-counter derivatives entered into with an Offshore Banking Unit of an IFSC.

  - Clause (4F) of section 10 is amended to extend the exemption to the income of a non-resident by way of royalty or interest, on account of lease of a ship in a previous year, paid by a unit of an IFSC, if the unit has commenced its operations on or before the 31st March, 2024.

    "Ship" is defined to mean a ship or an ocean vessel, an engine of a ship or an ocean vessel, or any part thereof.

Tax Incentives to IFSC

[Clauses 4,16, and 23] **(w.e.f. 01.04.2023)**

Rationalisation of the provisions of section 10

- In order to further incentivize operations from IFSC, it is proposed to provide the following additional incentives:
  - New clause (4G) inserted in section 10 to provide exemption to any income received by a non-resident from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking Unit, in any IFSC, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.
  - Explanation to clause (viib) of section 56 of the IT Act is amended to provide that specified fund shall also include Category I or a Category II Alternative Investment Fund which is regulated under the IFSC Authority Act, 2019.

Tax Incentives to IFSC

[Clauses 4,16, and 23] **(w.e.f. 01.04.2023)**

Rationalisation of the provisions of section 10

- In order to further incentivize operations from IFSC, it is proposed to provide the following additional incentives:

  - Clause (d) of sub-section (2) of section 80LA of the IT Act is amended to provide that in addition to the income arising from the transfer of an asset being an aircraft, the income arising from the transfer of an asset, being a ship, which was leased by a unit of the IFSC to any person shall also be eligible for deduction under section (1A) of the said section, subject to the condition that the unit has commenced operation on or before the 31st day of March, 2024.

Extension of the last date for commencement of manufacturing or production for claiming concessional tax rate under section 115BAB

[Clause 26] **(w.e.f. 01.04.2022)**

- Section 115BAB of the Act provides for an optional concessional rate of tax @ 15% for new domestic manufacturing companies, subject to non-availing of any specified incentives or deductions and subject to fulfillment of certain other conditions.
- As per clause (a) of section 115BAB(2), the eligible domestic manufacturing company must be set up and registered on or after 01.10.2019 and commenced manufacturing or production of an article or thing on or before 31.03.2023.
- Considering the delay in setting up/ registration of new domestic companies and commencement of manufacturing/ production by such companies due to the Covid-19 pandemic, the last date for commencement of manufacturing or production is proposed to be extended to 31.03.2024 by amending section 115BAB.

Extension of benefits to eligible Start-ups

[Clause 22] **(w.e.f. 01.04.2022)**

- The existing provisions of section 80-IAC of the Act provide for 100% deduction of profits and gains derived from an eligible business carried on by an eligible start-up for a period of 3 consecutive years out of 10 years, at the option of the assessee, subject to the condition, *inter alia,* that the start up is incorporated on or after 01.04.2016 but before 01.04.2022.
- Considering delay in setting up of such units due to the Covid-19 pandemic and in order to further promote such eligible start ups in India, it is proposed to amend section 80-IAC to provide the extension in the outer date of incorporation of an eligible start up from 01.04.2022 to 01.04.2023.

RETURN/ ASSESSMENT/ REASSESSMENT/ REVISION

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ Section 139 of the Act, as it stands, allows taxpayers to file following types of income-tax returns:

- Original return [u/s 139(1)]
- Belated return [u/s 139(4)]
- Revised return [u/s 139(5)]
- Return curing a defective return [u/s 139(9)]

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

- In order to facilitate ease of compliance to the taxpayer in a litigation free environment and to bring use of huge data with the Income-tax Department to a logical conclusion resulting in additional revenue realization for the Government, it is proposed to provide additional time of 24 months from the end of assessment year to file an **updated return** by introducing new sub-section (8A) in section 139 of the Act.
- Proposed sub-section (8A) provides as under:
  - Any person, whether or not he has filed original/ belated/ revised income-tax return for an assessment year may furnish an updated return;
  - Such updated return can be filed for the person's own income or income of any other person in respect of which he is assessable;
  - The updated return can be filed within 24 months from the end of relevant assessment year.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ It is further proposed that section 139(8A) shall not apply in case the updated return:

- is a return of loss; or
- results in decreasing the total tax liability determined on the basis of original/ belated/ revised return; or
- results in refund or increases the refund due on the basis of original/ belated/ revised return.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

- It is also proposed that a person shall not be eligible to furnish an updated return, where in case of such person:
  - search has been initiated u/s 132 or books of accounts, other documents or any assets are requisitioned u/s 132A; or
  - survey u/s 133A is conducted; other than survey conducted u/s 133(2A) with regard to survey of tax deductor and tax collector; or
  - A notice has been issued to the effect that money, bullion, jewellery or valuable article or thing, which are seized or requisitioned u/s 132 or 132A in the case of any other person belongs to such person; or
  - A notice has been issued to the effect that any books of accounts, documents, which are seized or requisitioned u/s 132 or 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to such person.
- Such person shall not be eligible to furnish an updated return for the assessment year relevant to the previous year in which search/ survey/ requisition is initiated/ conducted/ made and 2 assessment years preceding such assessment year.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

- It is proposed that no updated return can be furnished for the relevant assessment year, where:
  - an updated return for the relevant assessment year has already been furnished under this section; or
  - any proceedings for assessment/ reassessment/ recomputation/ revision of income is pending or has been completed for the relevant assessment year in the case of the assessee; or
  - Assessing officer has information in respect of such person for the relevant assessment year under the following laws and the same has been communicated to such person, prior to the date of filing updated return:
    - Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976; or
    - Prohibition of Benami Property Transactions Act, 1988; or
    - Prevention of Money-laundering Act, 2002; or
    - Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ It is proposed that no updated return can also be furnished for the relevant assessment year, where:

- information for the relevant assessment year has been received under the following sections and the same has been communicated to such person, prior to the date of filing updated return;
  - **Section 90** – DTAA with any country; or
  - **Section 90A –** DTAA with specified associations; or
- any prosecution proceedings under Chapter XXII of the Act (Section 275A to 280D) have been initiated in respect of such person prior to the date of filing updated return; or
- he is such person or belongs to such class of persons, as may be notified by the Board in this regard.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

- Section 140B is proposed to be inserted to provide for tax that is required to be paid for opting to file updated return; which shall be considered defective under section 139(9) if it is not accompanied with proof of payment of tax as required under proposed section 140B of the Act.
- For filing updated return, tax payable comprises of the following :

  (a) Determination of aggregate of tax and interest payable as per sub-section (1) or sub-section (2); **and**

  (b) Additional income-tax payable and computed as per sub-section (3).

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ **In case no original or belated return has been furnished earlier:**

- Tax payable on income shall be computed after taking into account credit of advance tax, TDS, TCS, relief or deduction of tax under section 89, 90, 91, 90A, tax credit claimed to be set-off under section 115JAA and 115JD.
- Tax payable shall include applicable interest under sections 234A/ 234B/ 234C, etc., fee payable under section 234F and additional income-tax computed in accordance with section 140B(3) of the Act.
- Updated return shall be accompanies by proof of payment of tax, interest, fee and additional tax.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ **In case original/ belated/ revised return was furnished earlier [Sec. 140B(2)]:**

- Tax payable shall be computed after taking into account:
  - Credit of all taxes and reliefs [like self assessment tax, advance tax, TDS, TCS, relief or deduction of tax under section 89, 90, 91, 90A, tax credit under section 115JAA and 115JD, deferred tax or interest in respect of ESOPs under section 191(2)] for which credit has already been taken in return filed earlier;
  - TDS or TCS on any income taken into account in computing total income, not claimed in earlier return;
  - Relief/ deduction of tax claimed under section 90, 91, 90A on account of ax paid outside India on such income, not claimed in earlier return;
  - Tax credit claimed to be setoff as per section 115JAA or 115JD, not claimed in earlier return
- Aforesaid tax shall be increased by refund issued in respect of earlier return, and

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

- Tax payable shall include applicable interest under section 234A/ 234B/ 234C, etc., fee payable under section 234F and additional income-tax computed in accordance with section 140B(3) of the Act.
- Updated return shall be accompanies by proof of payment of tax, interest, fee and additional tax.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ **It is proposed to levy additional tax under section 140B(3) of the Act in respect of updated return, as under:**

In case return is filed after expiry of time limit for belated or revised return but before completion of 12 months from the end of the relevant assessment year	25% of aggregate of tax (including surcharge and cess) and interest as computed under section 140B(1) or 140B(2) of the Act
In case return is filed after expiry of 12 months from the end of relevant assessment year but before completion of 24 months from the end of the relevant assessment year	50% of aggregate of tax (including surcharge and cess) and interest as computed under section 140B(1) or 140B(2) of the Act

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

- In case earlier return was filed, interest under section 234B shall be computed on tax payable determined under section 140B(2) of the Act as reduced by advance tax paid. [Section 140B(4)]
- In case earlier return was not filed, interest under section 234C of the Act shall be computed on total income as declared in updated return.
- In case no return was filed earlier, interest under section 234A of the Act shall be computed on tax on total income as declared in updated return.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

❖ Following consequential amendments are proposed to be made:

- Section 144 - Proposed to provide that in case assessee fails to make original/ belated/ revised/ **updated return** or fails to comply with notice issued under section 142(1), 142(2A), 143(2) of the Act, the assessing officer can make best judgment assessment.
- Section 153 – Proposed to provide that in case updated return is filed, assessment order under section 143 or 144 of the Act can be made within 9 months from the end of financial year in which updated return was filed.
- Sections 234A & 234B – Proposed to provide that interest under the said sections shall not be levied on additional tax computed under section 140B of the Act.
- Section 276CC – Proposed to provide that a person shall not be punishable under this section in case updated return is furnished.

Provisions for filing of updated return

[Clause 38, 39, 41, 48, 64, 65 and 81] **(w.e.f. 01.04.2022)**

Comments/ observations

- Whether updated return can be filed for assessment year 2020-21 and onwards, where no notice under section 143(2)/ 148 of the Act has been received?

- In respect of income declared in updated return, whether penalty under section 270A can be levied and/ or prosecution under section 276C of the Act be launched?

Faceless Schemes under the Act

[Clauses 24, 43, 70, 71] **(w.e.f. 01.04.2022)**

- With the aim to eliminate human interface between the taxpayer and the department and to impart greater efficiency, transparency and accountability, several faceless schemes are being introduced in a phased manner in the Act.

- Presently, schemes for faceless assessment, faceless penalty and faceless appeals before CIT(A) are in force.

- The scope of faceless regime of proceedings was further expanded vide the Taxation and Other Laws (Relaxation and Amendment to Certain Provisions) Act, 2020 and Finance Act, 2021, wherein provision for notifying below mentioned faceless schemes were introduced:

Faceless Schemes under the Act

[Clause 24, 43, 70, 71] **(w.e.f. 01.04.2022)**

S.No	Section	Scheme	Date of Limitation
1	92CA	Faceless determination of arm's length price	31st March, 2022
2	144C	Faceless Dispute Resolution Panel	31st March, 2022
3	253	Faceless Appeals to Appellate Tribunal	31st March, 2022
4	255	Faceless produce of Appellate Tribunal	31st March, 2023

- In view of the modifications proposed in the faceless assessment procedure which will require stabilization of IT system, the timelines to introduce faceless schemes for TP, DRP and Tribunal have been extended to 31st March 2024.

Faceless Schemes under the Act

Comments/ Observations:

- Presently, there are various operational, jurisdictional and technical challenges being faced in the faceless schemes that are currently in force, causing immense hardship to the taxpayers and the department.

- Further, the constitutional validity of the Faceless Appeals scheme is subject matter of consideration before various Courts which is pending adjudication.

- In view of the aforesaid, the proposal to delay notification of new schemes is a welcome step.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

- The scheme for conduct of Faceless Assessment was inserted in the Act through section 144B, notified vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the Faceless Assessment Scheme, 2019 ceased to operate from that date.

- Section 144B is proposed to be amended to streamline the process of faceless assessment to remove various difficulties being faced by the administration and the taxpayers in the operation of the faceless assessment procedure.

- The key changes proposed to be made are as under:

S. No.	Particulars	Existing provision	Proposed amendment
1.	Scope of section 144B expanded	– Assessment u/s 143(3) – Best judgment assessment u/s 144	– Assessment u/s 143(3) – Best judgment assessment u/s 144 – Re-assessment u/s 147

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

S. No.	Particulars	Existing provision	Proposed amendment
2.	Role of NaFAC has been curtailed	NFAC is conferred with several assessment related functions such as issuance of notice, granting/denying adjournment request, signing of final assessment order, etc.	– Such functions are now vested with the AU, who is no more required to 'facilitate' but 'conduct' the faceless assessment. – The role of NFAC would be restricted to be a communication channel between the taxpayers and AU and amongst different units set up under the faceless scheme.
3.	Transfer of ongoing assessment proceedings initiated manually	Section 144B(1)(iii) prescribed provision to transfer such matters from jurisdictional AO to NaFAC	Provision has been omitted, possibly because the pending assessments already stand initiated / transferred to NaFAC

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

S. No.	Particulars	Existing provision	Proposed amendment
4.	Time limit to furnish response to 143(2) notice	Standard timeline of 15 days – 144B(1)(ii)	As per date specified in the notice – 144B(iii)
5.	Scope of assistance from Technical unit ('TU') to Assessment Unit ('AU')	Any technical assistance – 144B(1)(v)(c)	Technical assistance has been defined – 144B(1)(iv)(c)
6.	Application for seeking adjournment	NaFAC – refer 144B(1)(vii)	NaFAC to forward request to AU - refer 144B(1)(v)
7.	Power to accept or reject the modification proposed by Review Unit ('RU')	AU to pass order after considering the variations suggested by the RU – 144B(1)(xx)	AU has the power to accept or reject the modification proposed by RU after recording reasons for rejection – 144B(1)(xx)

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

S. No.	Particulars	Existing provision	Proposed amendment
8.	Change in AU after receiving review report of RU	Review report prepared by RU is assigned to an AU, other than which had drafted the draft assessment order – section 144B(1)(xix)	To be assigned to the same AU – section 144B(1)(xvii)
9.	Concept of draft assessment order/ SCN vs. Income and Loss determination proposal ('ILDP')	AU is required to prepare draft assessment order cum SCN where any variation is proposed to be made, which is served on the assessee for raising objections	AU is required to prepare ILDP and thereafter a draft assessment order as per procedure explained in subsequent slides
10.	Provision for review of draft assessment order	The taxpayer had the opportunity to rebut the revised draft assessment order (if prejudicial to the interest of the assessee) – 144B(1)(xxv)	This opportunity has been taken away

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

S. No.	Particulars	Existing provision	Proposed amendment
11.	Power to invoke special audit	No such provision existed	Clause (xxxii) has been inserted to provide procedure to invoke provisions of section 142(2A) for conducting special audit
12.	RFAC	RFAC was set up to facilitate conduct of faceless assessment – 144B(3)(ii)	Abolished under the proposed section
13.	Scope of TU	Provide technical assistance on matters prescribed in 144B(3)(v)	Additionally provide assistance on any technical matter under an agreement entered into under section 90 or 90A – 144b(3)(iv)
14.	Opportunity of hearing – discretionary or mandatory	Discretionary – section 144B(7)(viii)	Mandatory in cases where variation is proposed, and taxpayer has made a request for personal hearing – section 144B(6)(viii)

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

S. No.	Particulars	Existing provision	Proposed amendment
15.	Authentication of communication issued under faceless assessment	NFAC – refer section 144B(7)(i)	NFAC, AU, VU, TU, RU, as the case may be – refer section 144B(6)(i)/(ii)
16.	Modes of authentication permitted to taxpayer	- Affixing DSC - Under EVC	- Affixing DSC - Under EVC - By logging into registered account on the e-filing portal
17.	Validity of assessment order made in violation with the procedure prescribed under section 144B	As per sub-section (9), such orders were to be considered as non-est	Sub-section (9) is proposed to be deleted with retrospective effect from 01.04.2021

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

❖ Key procedure in the revised assessment procedure under the faceless regime is as under:

Step 1: NaFAC shall assign the case to an AU

Step 2: NaFAC to intimate the assessee that assessment shall be completed as per provisions of section 144B

Step 3: Notice to be served on the assessee who is required to submit response within the date specified therein. Notice for further enquiries can also be issued

Step 4: If the assessee fails to comply with the abovementioned notice, a notice under section 144 would be served on the assessee

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Step 5: Based on available submissions, AU to prepare and send to NaFAC:

a) ILDP – if no variation prejudicial to the assessee is proposed

b) SCN - if variations prejudicial to the interest of the assessee is proposed to be made. In such a case notice is to be issued and assessee is required to furnish response, considering which ILDP is to be prepared

Step 6: Upon receipt of ILDP, the NaFAC may either (a) convey AU to prepare draft order; or (b) assign the ILDP to RU who is required to prepare and send review report to NaFAC.

Step 7: NaFAC to send review report to the AU, who prepared the ILDP, who is then required to prepare a draft order after accepting or rejecting (after recording reasons) some or all the modifications proposed by the RU and send it to NaFAC

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Step 8: Upon receiving the draft order, NaFAC is to take following action:

a) In case where assessee has the option to challenge the order before the DRP – serve the draft order on the assessee

b) In other cases – direct the AU to pass final order in accordance with draft order and initiate penalty proceedings. Thereafter, NaFAC to serve copy of final order and notice for initiating penalty proceedings along with demand notice to the assessee

Step 9: Where draft order is served on the assessee (refer Step 8 (a) above), the assessee shall (a) either file acceptance of the proposed variations to NaFAC, or (b) file objections to the proposed variations with the DRP as well as NaFAC within the prescribed period

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Step 10: In case NaFAC receives acceptance from the eligible assessee or no objections are received within the prescribed period, NaFAC to intimate AU to complete assessment on the basis of draft order. Thereafter, AU is required to pass final order within the prescribed time and initiate penalty proceedings. Subsequently, NaFAC to serve copy of final order and notice for initiating penalty proceedings along with demand notice to the assessee

Step 11: In case NaFAC receives objections from the eligible assessee, NaFAC to intimate the AU and send copy of the objections to it. Thereafter, once DRP directions are received by NaFAC, copy thereof is to be sent to the AU, who will then complete assessment within the prescribed time and initiate penalty. Subsequently, NaFAC to serve copy of final order and notice for initiating penalty proceedings along with demand notice to the assessee

Step 12: After completion of assessment, all the electronic records to be transferred to the jurisdictional assessing officer

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Comments/ Observations:

Scope of faceless assessment expanded

- By way of the proposed amendment, the scope of section 144B is sought to be expanded to cover reassessment proceedings under section 147.

Change in timeline for responding to notice under Section 143(2):

- The mandatory timeline of 15 days to assessee to furnish its response to notice received under section 143(2) has been replaced with the time specified in the notice. This amendment will help fast track completion of assessments, considering the reduction in timelines provided for in section 153 for the upcoming assessment years.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

E-verification of returns merely by logging into the e-filing portal

- This e-verification facility seems to have been granted to alleviate the challenges faced by taxpayers in filing of responses and submissions on transition from the erstwhile e-filing portal to the new one. Taxpayers would however be required to comply with Rule 14 of the Income tax Rules 1962, which is a suo-moto declaration confirming the particulars to be true and correct.

Defining and widening of roles and functions of TU

- The scope has been defined to include arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter. This provides a clear direction to AU to refer matters pertaining to specialized areas and issues to the TU, thereby pooling the expertise and increasing efficiency.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Scope of RU restricted

- In the present scheme, the draft assessment order prepared by AU was reviewed by RU and the modifications were sent to an AU, other than the AU preparing draft order, which was then considered by new AU to pass revised draft assessment order.

- However, in the amended scheme, the RU has to send modifications to the same AU making the ILDP, who then has the power to either accept or reject the modifications suggested. In effect, the role of RU seems to be minimized/ limited and the review done by RU may lose effect

- Further, the words 'whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of variations proposed' have been removed, though the residuary clause – 'such other functions' remain

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Personal hearing opportunity to assessee - Discretionary to mandatory

- Clause (vii) of section 144B(7) empowers the Chief Commissioner or Director General of the concerned Regional Faceless Assessment Centre, to approve the request made by an assessee for personal hearing if he is of the opinion that the circumstances for grant of personal hearing are satisfied.
- The aforesaid provisions providing discretionary powers to grant personal hearing to taxpayers had been a subject matter of protracted litigation challenged before various Courts throughout the country through writ petitions. Various High Courts through its judgements had held that personal hearing is assessee's vested right and cannot be denied under any circumstances, and any order passed without granting such an opportunity would be in violation of principles of natural justice. Refer below recent cases:
  - Bharat Aluminium Company Ltd. vs. Union of India in W.P.(C) 14528 OF 2021; Order dated 14.01.2022 (Del.)

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

- Dar Housing Ltd. vs. National E Assessment Centre Delhi in W.P.(C) No. 4989 of 2021; Order dated 08.09.2021 (Del.)
- Mantra Industries Ltd. vs. National Faceless Assessment Centre (NFAC or NeAC) in W.P. No. 1625 of 2021; Order dated 11.10.2021 (Bom.)
- Chander Arjandas Manwani vs. National Faceless Assessment Centre in W.P. No. 3195 of 2021; Order dated 21.09.2021 (Bom.)
- Nagalinga Nadar, M.M. vs. Addl./Jt./Dy./Asstt. CIT/ITO/ITD/National Faceless Assessment Centre in W.P.(MD) No. 16695 of 2021; Order dated 16.09.2021 (Mad.)

❖ By way of the proposed amendment, the aforesaid discretion is sought to be removed and it has been provided that personal hearing shall be provided if sought by an assessee in cases where variation is proposed.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Variations proposed in draft assessment order

- In the present section 144B, it is provided that in cases where after receiving and considering objections to variations proposed in the show-cause notice incorporating draft assessment order, new variation(s), other than those originally proposed are made in the revised draft assessment order, the assessee shall be provided an opportunity to submit its objections/ response to such revised draft assessment order. The aforesaid mechanism of issue of revised draft assessment order and enabling assessee to file its objections is proposed to be removed in the amended section.
- Presently, in various cases it was observed that the variations made in the draft assessment order were different from those intimated to the assessee in the SCN. The High Courts, in the writ(s) filed against such orders had set-aside the order to ensure compliance with the scheme.
- The proposed action to remove this procedure would result in taking away the right of the assessee to explain itself qua the revised additions proposed in the draft order, which is in clear violation of principles of natural justice.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Assessment not void if procedure not followed

- The assessment order passed under section 144B in the past year suffered from various procedural and technical defects, which were challenged under sub-section (9) of section 144B. This created an impediment for the tax departments, since several writ petitions were filed before various High Courts to challenge the validity of assessment orders and treat the assessment void on account of non-adherence to the procedure set out in section 144B. The section is proposed to removed with retrospective effect from 1.4.2021.
- The intent behind the omitting section 144B(9) is stated to reduce unnecessary litigation arising due to mere technical/ procedural issues arising due to use of information technology.
- The proposal to delete the aforesaid section may result in genuine hardship to the assessee, where arbitrary assessments are framed by not following the procedure of section 144B. In cases of actual violation of the procedure, the assessee should cautiously raise the objection in the assessment and timely explore the option of filing a writ petition before the High Court.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

AU empowered to invoke provisions of 142(2A) subject to approval

- The AU has been granted authority to request NaFAC to invoke special audit under section 142(2A), subject to approval from jurisdictional CCIT. Upon approval of such request, the case would be transferred to the jurisdictional assessing officer for implementation of section 142(2A). Given that the special audit provisions require extensive co-ordination with the external accountant and the assessee and thorough examination of accounts clubbed with approval from the CIT, the implementation of section 142(2A) is proposed to be transferred to the assessing officer.

- As per the erstwhile scheme, the CCIT in charge of NaFAC, in order to invoke and implement special audit under section 142(2A), had to seek approval from the CBDT to transfer the case to the Assessing officer. This procedure has been simplified and NaFAC has been given powers to invoke special audits.

Amendment of the Faceless Assessment Scheme

[Clause 42] **(w.e.f. 01.04.2022)**

Ambiguity regarding faceless conduct of re-assessment proceedings

- The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act) Act, 2020, introduced a new section 151A in the Act to empower Central Government to formulate a scheme for conducting faceless reassessment proceedings u/s 147. Such scheme was to provide procedure for issuance of notice under section 148, conducting enquiries or issuance of show-cause notice, passing order under section 148A, sanction for issue of such notice under section 151 before 31 March, 2022.

- Reference to faceless re-assessment in section 144B has caused confusion. Firstly, section 147 does not provide procedure for issuance of notice, obtaining sanction, passing order, etc. Moreover, there is clearly an overlap with section 151A. The interplay of these sections ought to be clarified by the legislature.

Rationalization of provisions relating to assessment and reassessment

[Clauses 44 to 47]

The legislature vide the Finance Act, 2021 completely revamped the scheme of reassessment by substituting the provisions of sections 147, 148, 149 & 151 and introduced a new procedure to be followed before issuance of notice under section 148.

Further, sunset clauses were inserted in sections 153A & 153C in respect of assessments to be completed pursuant to search initiated under section 132 & requisition under section 132A on or after 01.04.2021.

These amendments came into effect form 01.04.2021.

Comparative analysis of the preconditions prescribed for initiation of reassessment proceedings:

On a plain reading, requisite preconditions for taking action under section 147, as existed prior to amendment by FA, 2021	On a plain reading, requisite preconditions for taking action under section 147, post amendment by FA, 2021
(a) The AO must have 'reason to believe' that 'income' has 'escaped assessment'. (b) The AO must come to conclusion that income has escaped assessment on account of failure on the part of the assessee to disclose fully and truly material facts (beyond four years in case of assessment under section 143(3) or 147);	(a) There must be income chargeable to tax that has 'escaped assessment'. (b) Before issuing notice under section 148, the AO must adhere to the procedure prescribed under section 148A, the important of which are: (i) With prior approval of specified authority, conducting of inquiry, if required, with respect to the information suggesting escapement of income [clause (a)]; (ii) With prior approval of specified authority, show cause notice and opportunity of being heard to be provided to the assessee, as to why notice under section 148 should not be issued, on the basis of information in his possession and inquiry conducted under clause (a) [clause (b)]; (iii) With prior approval of specified authority, after considering reply of the assessee, order to be passed deciding whether it is a fit case for issuance of notice under section 148 [clause (c) & (d)]; (iv) With prior approval of specified authority, notice under section 148 has to be served along with order passed under section 148A(d) [section 148]. Contd...

On a plain reading, requisite preconditions for taking action under section 147, as existed prior to amendment by FA, 2021	On a plain reading, requisite preconditions for taking action under section 147, post amendment by FA, 2021
(c) He must comply with the conditions laid down in sections 148 to 153, the important of which are: (i) AO must record reasons for reopening [section 148(2)]; (ii) He must issue a notice to the assessee, calling upon him to file a return of income [section 148(1)]; (iii) He must adhere to the time limits for notice under section 149 viz. 4 years, 6 years and 16 years and section 150; (iv) He must obtain prior sanction of his superiors, if required under section 151; and (v) He must complete the assessment within the time limit set out in section 153	(c) He must adhere to the time limits under section 149 viz. 3 years and 10 years (in very specific cases subject to prescribed conditions) [6 years grandfathered for assessments till assessment year 2021-22]. (d) Specified authority under section 151 for reopening of cases within 3 years is of the rank of Principal Commissioner, etc., and for cases reopened after 10 years the authority is of the highest rank of department being Principal Chief Commissioner, etc. (e) He must complete the assessment within the time limit set out in section 153.

Rationalization of provisions relating to assessment and reassessment: Section 148

Proposed amendment No.1 to Section 148: [w.e.f. 01.04.2022]

- On a conjoint reading of sections 148 and 148A(d), it transpires that the AO is required to seek approval from specified authorities twice, viz. (a) while passing order under section 148A(d) disposing objections raised by the assessee; and (b) again before issuing notice under section 148.

- **In order to rationalize the provisions and avoid repetitive approvals** from the same authorities at the same stage, second proviso is proposed to be inserted to dispense with the requirement of seeking approval where an order under section 148A(d) has been passed to the effect that it is a fit case to issue notice under section 148.

Proposed amendment No.2 to Section 148: [w.e.f. 01.04.2022] :

Meaning of the term Information in terms of Explanation 1	Proposed amendment in Explanation 1 to Section 148- Seeking enlargement of term "Information"
(a) any information flagged in accordance with risk management strategy of the Board	(a) any information ~~flagged~~ in accordance with risk management strategy of the Board;
(b) any final objection raised by CAG;	(c) any audit objection that assessment has not been made in accordance with the provisions of the Act;
	(d) any information received under DTAA;
	(e) any information made available to the Assessing Officer under the scheme notified under section 135A;
	(f) any information which requires action in consequence of the order of a Tribunal or a Court

Rationalization of provisions relating to assessment and reassessment: Section 148

Proposed amendment No.3 to Section 148: [w.e.f. 01.04.2022]

- Presently, Explanation 2 to section 148 provides that the **assessing officer shall be deemed to have 'information' which suggest that income chargeable to tax has escaped assessment** in the following cases:

(a) Where search is conducted or requisition is made initiated or made on or after 01.04.2021;
(b) In case of a non-searched person where any undisclosed asset belonging to or any books of account or document pertaining to such person in found in the course of search or requisition;
(c) Where survey is conducted under section 133A [**excluding cases under** sub-sections (2A) **and (5)**] on or after 01.04.2021;

for **3 AY's** immediately preceding the assessment year in which such search is initiated or requisition is made or asset/ books/ documents are seized or requisitioned in case of any other person.

Rationalization of provisions relating to assessment and reassessment: Section 148

Proposed amendment No.3 to Section 148: [w.e.f. 01.04.2022]

❖ Following amendments are now proposed in section 148:

(a) Cases of survey falling within section 133A(5), i.e., survey conducted to get information relating to expenditure incurred on functions, etc., are now brought under the category of deemed information for the purpose of reopening of assessment; and

(b) the words 3 assessment years is deleted, meaning thereby, that in case of search/ survey/ requisition, there shall be no requirement of possession of 'information' even for assessment years prior to 3 assessment years.

Rationalization of provisions relating to assessment and reassessment: Section 148

- The proposed amendments to the Explanations seeks to enlarge the ambit of term (a) '*information*' and (b) '*deemed to have information*', thereby, broadening the selection criteria of the cases for reassessment.

- The expression "information" has substantially been widened to even include "any audit objection" and "any information which requires action in consequence of the order of a Tribunal or a Court".

Rationalization of provisions relating to assessment and reassessment: Section 148

Proposed insertion of Section 148B: [w.e.f. 01.04.2022]

- In cases where reassessment has been initiated on the basis of 'deemed information' (as specified under Explanation 2 to section 148, i.e., search, requisition and survey cases), additional fetter is proposed to be introduced to provide that no reassessment order shall not be passed by an AO below the rank of Jt. CIT except with prior approval of the Addl. CIT/ Addl. DIT or Jt. CIT/ DIT

Rationalization of provisions relating to assessment and reassessment: Section 149

Proposed amendment No. 1 to Section 149: [w.e.f. 01.04.2022]

- The extended period of limitation of within 10 years from the end of relevant AY applies to, specific cases where AO has in his possession **books of account or other documents or evidence** indicating income escaping assessment, **represented in the form of asset**, of Rs.50 lakhs or more.

- The extended period of 10 years is now proposed to be made applicable to cases AO has in his possession books of account or other documents or evidence which reveal income escaping assessment of Rs.50 lakh or more represented in the form of:

  a) an asset;

  b) expenditure in respect of a transaction or in relation to an event or occasion; or

  c) an entry or entries in the books of account.

Rationalization of provisions relating to assessment and reassessment: Section 149

Proposed amendment No. 2 to Section 149: [w.e.f. 01.04.2022]

- It is also proposed to insert a new sub-section (1A) to provide that, if income escaping assessment in the form of an asset or expenditure in relation to an event or occasion of Rs.50 lakhs or more is relation to more than one assessment year within the extended period of 10 years, then, notice under section 148 shall be issued for every such assessment year.
- Insertion of this new provision creates a class of deemed escapement of income and will give rise to reopening assessments for multiple years to bring to tax escapement of Rs.50 lakh or more.
- For example: If say undisclosed investment in property of Rs.70 lakh is found to spread over three assessment years, then, notice shall be issued for all the three assessment years.

Rationalization of provisions relating to assessment and reassessment: Section 149

- Section 149 contains grandfathering clause, whereby assessment for assessment year 2021-22 and prior years can, even under the new regime, be reopened only upto 6 years (and not 10 years).
- The aforesaid provisions are now applicable to even search/ survey conducted on and after 01.04.2021, which were, earlier governed by sections 153A/153C. The search assessments under section 153A/153C permits assessments for upto 10 prior years.
- Therefore, to align the provisions of section 149(1) with the provisions of section 153A/153C, it is sought to amend the first proviso to section 149(1) w.r.e.f. 01.04.2021, grandfathering period shall be reckoned in terms of period permitted under sections 149(b), 153A or 153C.

Section 263- Revision of TPO's order

[Clauses 48 & 72] **(w.e.f. 01.04.2022)**

- Section 263 is proposed to be amended to grant power of revision to CIT to modify order passed by TPO under section 92CA of the Act or cancel the same and direct fresh assessment.

- Consequential amendment has been proposed in section 153 to provide as under:

  - TPO must pass order giving effect to order of CIT passed under section 263 of the Act within 3 months or the latter's order/ directions. Extension of 6 months is available with approval of CIT [amendment in sub-section (5)]

  - On receipt of fresh order passed by TPO, the AO must pass fresh assessment order in conformity with the TPO's order within 2 months from receipt of TPO order [insertion of sub-section (5A)]

Section 263- Revision of TPO's order

Comments/ Observations:

- Can it be argued that prior to aforesaid amendment, the CIT did not have any power u/s 263 of the Act to revise TPO's order?
- Normally, a draft assessment order passed in conformity with order u/s 92CA is challenged before DRP u/s 144C of the Act and final assessment order is passed in accordance with the directions of the DRP which constitutes three members of rank of Commissioner.
- Post passing of TPO order:
  - draft assessment order is passed in sixty days time (second proviso below Explanation 1 to section 153) is a time barring process, the time for passing final assessment order u/s 144C(13);
  - on challenge, directions are issued in nine months time (sec. 144C(12);
  - thereafter final assessment order is passed in one month time [sec. 144C(13)]

Section 263- Revision of TPO's order

Comments/ Observations:

- The aforesaid timelines is highlighted to suggest that final assessment order is passed in around a year's time from passing of TPO's order

- Time limit for passing order u/s 263 is two years from TPO's order. Thus, TPO order can be revised after passing of final assessment order

  Recently, **ITAT Mumbai** in case of **Barclays Bank Plc v. CIT: ITA No.827/Mum/2021** held that final assessment order passed in conformity with directions of DRP, which stands at a higher pedestal than the CIT alone, cannot be revised u/s 263 by the CIT.

  Whether the aforesaid amendment nullify the said decision of the Tribunal inasmuch as TP adjustments are concerned?

Section 263- Revision of TPO's order

Comments/ Observations:

- In terms of section 153(5A), whether the assessing officer would be required to pass a draft assessment order in conformity with fresh order passed TPO u/s 92CA/ 263 of the Act, which can be assailed before DRP?

DISPUTE RESOLUTION

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

❖ Presently, section 158AA of the Act provides that :

(a) where Commissioner or Principal Commissioner is of the opinion that any question of law arising in the case of an assessee (relevant case) is identical to question of law arising in the case of same assessee for another assessment year which is pending before the Supreme Court, against the High Court order in favour of the assessee (other case);

(b) then, he may direct the assessing officer to file application before the ITAT stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case;

(c) such application is to be filed only with the consent of the assessee.

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

- In order to reduce the litigation in cases where common question of law is pending before the jurisdictional High Court or before the Supreme Court against the decision of the jurisdictional High Court, in the case of the assessee itself or in the case of another assessee, new section 158AB is proposed to be inserted w.e.f. 01.04.2022.

- The proposed new section 158AB provides that the decision to that effect shall be taken by a collegium comprising of two or more of Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the Board.

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

- The proposed new section 158AB provides that the collegium may decide and intimate the Commissioner or Principal Commissioner not to file any appeal before the Tribunal or High Court, against the order of CIT(A) or the Tribunal, respectively, where the collegium is of the opinion that:

  - any question of law arising in the case of an assessee for any assessment year ("relevant case") is identical with question of law already raised in assessee's own case or any other assessee's case for any assessment year; and

  - such question of law is pending before the jurisdictional High Court in an appeal under section 260A or before the Supreme Court in an appeal or by way of SLP against the order of the Tribunal or the jurisdictional High Court, which is in favour of the assessee ("other case")

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

- The proposed new section 158AB further provides that the Commissioner or Principal Commissioner shall, on receipt of communication from the collegium, direct the assessing officer to make an application to the Tribunal or the jurisdictional High Court, in the prescribed form, within 60 days from the date of receipt of order of CIT(A) or within 120 days from the date of receipt of order of the Tribunal, as the case may be, stating that an appeal on the question of law arising in the relevant case may be filed when decision on such question of law becomes final in the other case.

- No direction to the assessing officer to make the aforesaid application shall be made by the Commissioner or Principal Commissioner, unless acceptance from the assessee is received to the effect that question of law in the other case is identical to the question of law in the relevant case.

- Where no acceptance is received from the assessee, the Department shall proceed with filing appeals as per section 253(2)/ 260A(2) of the Act.

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

- Sub-section (4) of proposed section 158AB provides that when final decision on the question of law in the other case is received and the order of the CIT(A) or the Tribunal is not in conformity with such final decision, the Commissioner or Principal Commissioner may direct the assessing officer to file appeal before the Tribunal or High Court, as the case may be.

- Appeal under aforesaid section 158AB(4) shall be filed within 60 days from the date on which decision of the jurisdictional High Court or Supreme Court is communicated, in accordance with procedure specified by the Board in this behalf, to the Principal Commissioner or Commissioner.

- Sunset clause is proposed to be inserted in section 158AA(1) to provide that no direction shall be given under the said sub-section on or after 01.04.2022.

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

Comments/ observations

- Proposed section 158AB extends the scope of erstwhile section 158AA inasmuch as filing of appeals before the ITAT could be kept in abeyance in terms of the latter section only where identical question of law was already pending adjudication before the Supreme Court in assessee's own case.

- The proposed new section covers situations wherein common question of law is pending for adjudication before the jurisdictional High Court, in addition to the Supreme Court, and even where such question is pending before the jurisdictional High Court or Supreme Court in the case of any other assessee for any assessment year (and not only in assessee's own case). Filing of appeals before the High Court can also be kept in abeyance under the proposed section.

- It remains to be seen whether Income-tax Department will invoke this section on a regular basis and attempt to reduce litigation; instances of section 158AA of the Act being invoked in the past have been few and far between.

Litigation Management

[Clause 51 and 52] **(w.e.f. 01.04.2022)**

Comments/ observations

- Consent of the assessee may not be forthcoming in cases where the identical question of law is pending in case of another assessee since the same shall result in the assessee giving up its right of hearing.

- Under the proposed section 158AB, the Income-tax Department is not given an option to not file SLP or appeal before the Supreme Court even if common question of law is already pending before the Supreme Court.

Dispute Resolution Committee ("DRC")

[Clause 67] **(w.e.f. 01.04.2022)**

- Section 245MA of the Act was introduced by the Finance Act, 2021 to provide an option to specified persons who fulfil specified conditions stated therein for dispute resolution under the said section in respect of specified orders.

- The existing provisions of section 245MA of the Act do not contain any provision enabling the assessing officer to pass an order giving effect to the order/ directions of the DRC; amendment is proposed by way of insertion of new sub-section to the said section to correct the anomaly.

- The assessing officer would, after the proposed amendment, be required to pass an order of assessment/ reassessment/ recomputation in case where specified order is draft assessment order under section 144C(1) or, in any other case, to modify the order of assessment/ reassessment/ recomputation, in conformity with the directions contained in the order of the DRC within 1 month from the end of the month in which such order is received.

TAX DEDUCTION AT SOURCE (TDS)

Rationalization of provisions of Section 206AB and 206CCA to widen and deepen tax-base

[Clause 57, 61 and 63] **(w.e.f. 01.04.2022)**

- Vide Finance Act, 2021, sections 206AB and 206CCA were inserted in the Act as special provisions providing for higher rate for TDS / TCS (i.e., twice the rate under the Act or 5%, whichever is higher) for the non-filers (**specified persons**).

- Under existing provisions of sections 206AB and 206CCA, "specified person" is defined to mean a person who has not filed ITRs for both of the two assessment years relevant to the two financial years which are immediately before the previous year in which tax is required to be deducted or collected within the time prescribed under section 139(1) and the aggregate TDS/TCS in his/her is Rs.50,000 or more.

- In order to ensure that all the persons in whose case significant amount of tax has been deducted/collected do furnish their return of income, it is proposed to reduce two years requirement of ıt filing ITR to one year.

Rationalization of provisions of Section 206AB and 206CCA to widen and deepen tax-base

[Clause 57, 61 and 63] **(w.e.f. 01.04.2022)**

- It is thus proposed to amend the definition of "specified person" in sections 206AB and 206CCA to mean a person who has not filed its ITR for the assessment year relevant to the previous year immediately preceding the financial year in which tax is to be deducted or collected, within the time prescribed under section 139(1) and the aggregate TDS/TCS in his/her is Rs.50,000 or more.

- It is further proposed that the provisions of section 206AB shall not apply in relation to transactions on which tax is to be deducted under sections 194-IA, 194-IB and 194M of the Act.

Comment / Observations:

- Under existing provision, if ITR was not filed in 1 of the years out of the 2 years specified, then provisions were not applicable. By reducing requirement to 1 year, the provision has been made ore stringent to ensure filing of ITRs.

TDS on sale of immovable property

[Clause 56] **(w.e.f. 01.04.2022)**

- Section 194-IA provides that any person responsible for making payment to a resident for transfer of immovable property, shall at the time of such payment/ credit, deduct tax at source thereon @1%, provided the said payment, in aggregate, is more than or equal to Rs.50 lakhs.

- The existing provisions of section 194-IA requires deduction of tax on the actual consideration paid by the transferee to the transferor. However, sections 43CA and 50C provide that where consideration for transfer of land/building is less than Stamp duty value (SDV) thereof, then SDV shall be deemed as full value of consideration for computation of income under the head ‘“Profits and gains from business or profession” and “capital gains respectively.

TDS on sale of immovable property

[Clause 56] **(w.e.f. 01.04.2022)**

- In order to remove the inconsistency in the provisions of section 194-IA and sections 43CA and 50C of the Act, it is proposed to amend section 194-IA(1) to provide that in case of transfer of an immovable property (other than agricultural land), TDS is to be deducted @ 1% of such sum paid or credited to the resident or the SDV of such property, whichever is higher.

- It is further proposed to amend provisions of section 194-IA(2) to provide that no deduction of tax shall be required where the consideration paid for the transfer of immovable property and the SDV of such property are both less than Rs.50 lakhs.

TDS on sale of immovable property

[Clause 56] **(w.e.f. 01.04.2022)**

- Further, clause (c) has been inserted to the Explanation to section 194-IA to define "stamp duty value" to have the same meaning assigned to it in clause (f) of Explanation to clause (vii) of section 56(2) of the Act.

Comment / Observations:

- Provisions of sections 43CA and 50C prescribe a tolerance band of 10% which is absent in section 194-IA. Thus, a situation may arise where SDV is more than actual consideration, but the difference falls within the tolerance band; and therefore, actual consideration is considered for computing income under the head '"Profits and gains from business or profession" and "capital gains" but TDS is deducted on SDV.

TDS on benefit or perquisite of a Business or Profession

[Clause 58] **(w.e.f. 01.07.2021)**

- As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is taxable under the head 'profits and gains of business or profession' in the hands of the recipient of such benefit or perquisite.

- However, it is noticed that in many cases, such recipients do not report the receipt such benefit or perquisite in their return of income, leading to furnishing of incorrect particulars of income.

TDS on benefit or perquisite of a Business or Profession

[Clause 58] **(w.e.f. 01.07.2021)**

- In order to widen and deepen the tax base, it is proposed to insert a new section 194R in the Act to provide that the person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from carrying out of a business or exercising of a profession by such resident, shall, ensure deduction of tax at source in respect of such benefit or perquisite @ 10% of the value or aggregate of value of such benefit or perquisite before providing such benefit or perquisite to such resident.

- As per **Explanation to section 194R,** "Person responsible for providing" any benefit or perquisite would mean a person providing such benefit or perquisite or, in case of a company, the company itself including the principal officer thereof.

TDS on benefit or perquisite of a Business or Profession

[Clause 58] **(w.e.f. 01.07.2021)**

- It is further proposed that in a case where such benefit or perquisite, is wholly in kind or partly in cash and partly in kind but such part in cash is not sufficient to meet the liability of TDS, then the person responsible for providing such benefit of perquisite shall ensure that tax has been paid in respect of the benefit or perquisite before releasing the benefit or perquisite to the recipient. **[First proviso to section 194R]**.

- Provisions of section 194R shall not apply:

  - where value or aggregate value of benefit or perquisite during the year **does not exceed Rs. 20,000 [second proviso to section 194R]**

  - to an individual or HUF, whose total sales/gross receipts/turnover does not exceed **Rs. 1 crore (in case of business)** and **Rs. 50 lakhs (in case of profession)** during FY immediately preceding the FY in which such benefit or perquisite, is provided. **[third proviso to section 194R]**

TDS on benefit or perquisite of a Business or Profession

[Clause 58] **(w.e.f. 01.07.2021)**

Comment / Observations:

- Welcome measure to check revenue leakage since such transactions remained largely unreported and consequently, escaped taxation.
- Onus on the payer to value the perquisite/benefit in kind and ensure that tax is paid from his pocket.
- Pure monetary transactions which are outside the ambit of section 28(iv) will not be covered by proposed section 194R.

Consequence for failure to deduct or pay tax

[Clause 60 & 62] **(w.e.f. 01.04.2022)**

- In terms of sub-section (1A) of section 201 of the Act, if any person who is liable to deduct tax at source does not deduct it or after so deducting fails to pay, the whole or any part of the tax to the credit of the Government, then, such person is liable to pay simple interest as given below:
  a) Interest levied @ 1% for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax was deducted;
  b) Interest levied @ 1.5% for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax was actually remitted to the credit of the Government.

- In other words, interest is levied @ 1% for every month or part of a month for delay in deduction and @ 1.5% for every month or part of a month for delay in remittance after deduction.

Consequence for failure to deduct or pay tax

[Clause 60 & 62] **(w.e.f. 01.04.2022)**

- Similarly, provisions are contained in sub-section (7) of section 206C of the Act which provides that if any person who is liable to collect tax at source does not collect it or after so collecting fails to pay the same to the credit of the Central Government, then he shall be liable to pay interest at rates specified therein.

- Interest under sub-section (1A) of section 201 of the Act is levied as a compensatory measure for loss of Revenue for the period during which tax was not paid to the government.

- The computation of interest under the aforesaid provisions in case where the default for deduction/collection of tax or payment of tax continues (i.e., remains unpaid) was subject matter of frequent litigation.

Consequence for failure to deduct or pay tax

[Clause 60 & 62] **(w.e.f. 01.04.2022)**

- The Finance Bill now proposes to provide that where any order is made by the assessing officer for default under section 201(1) or 206C(7) of the Act, the interest shall be paid by the person in accordance with the order made by the assessing officer.

TAXATION OF TRUSTS/ PUBLIC INSTITUTIONS/ EDUCATIONAL INSTITUTIONS/ CO-OPERATIVE SOCIETY

Charitable Trusts/ Institutions

- Charitable Trust and Institutions can avail exemption under the following regimes:
  - Fund/ trust/ institution referred under clauses (iv), (v), (vi) and (via) under section 10(23C) [referred as **Category 1**]
  - Trusts registered under section 12AA/12AB [referred as **Category 2**]

- Amendments proposed in respect of aforesaid trusts are classified into three buckets:
  I. For ensuring effective monitoring and implementation;
  II. For bringing consistency in the provisions of the two exemption categories; and
  III. For providing clarity on taxation in certain circumstances

Book of accounts

[Clauses 4 and 6] **(w.e.f 1.04.2023)**

- Presently, the provisions provide for mandatory audit of accounts if the total income of the trusts exceed maximum amount which is no chargeable to tax.

  [refer tenth proviso to section 10(23C) for Category 1 and section 12A(1)(b) for Category 2]

- The aforesaid provisions are proposed to be amended to provide for mandatory maintenance of 'books of account' and other documents in form, manner and place as may be prescribed.

Unreasonable benefit to specified persons

[Clauses 4, 76] **(w.e.f 1.04.2023)**

- For **Category 2**, section 13(1)(c) provides for denial of exemption in cases where income/ property is utilized for benefit of specified persons referred in section 13(3) of the Act [like author, manager, substantial contributor, etc.]

- Similar provisions are proposed for Category 1 trust/ institution by **insertion of 21st proviso** to section 10(23C) of the Act.

- Provisions of sub-sections (2), (4) and (6) of section 13 shall apply to Category 1 cases also. The said sub-sections principally allows reasonable payments/ services to specified persons.

Unreasonable benefit to specified persons

[Clauses 4, 76] **(w.e.f 1.04.2023)**

- Proposed new section 271AAD provide that the AO **may** direct levy of following penalty for violation of section 13(1)(c) and 21st proviso to section 10(23C) :

  (a) In case of first-time violation- 100% of income applied for benefit of specified persons;

  (b) In case of further violations- 200% of income applied for benefit of specified persons;

- The proposed section seeks to operate without prejudice to other penalty provisions. Thus, if any penalty is leviable under any other provisions of this chapter, aforesaid penalty would still be applicable in addition.

Unreasonable benefit to specified persons

[Clauses 4, 76] **(w.e.f 1.04.2023)**

Comments/ Observations:

- The use of word **may** suggest that penalty is not mandatory and thus must not be levied in bonafide cases.

- Illustratively, in cases where addition is made to the income in respect of amount applied in violation of section 13(1)(c), the assessing officer may levy– (i) penalty u/s 270A for under reporting of income; and (ii) penalty under proposed section 271AAD for violation of section 13(1)(c) of the Act.

- Whether levy of penalty twice for same offence shall be constitutionally valid?

Cancellation/ Withdrawal of Registration

[Clauses 4,7] **(w.e.f 1.04.2022)**

- Scheme for withdrawal/ cancellation of registration has been overhauled.
- For C**ategory 2** cases, sub-sections (4) and (5) of section 12AB are proposed to be substituted to provide that where a trust is registered under section 12AA/ 12AB and subsequently:
  - PCIT has noticed occurrence of '**specified violations**' (*infra*); or
  - reference for withdrawal of registration is received by PCIT from AO under second proviso to section 143(3) of the Act; or
  - case is selected under risk management strategy of the Board;

then, PCIT shall, after making necessary enquiries and after affording reasonable opportunity of being heard to the assessee, pass an order either cancelling or refusing to cancel registration. The order must be forwarded to the AO as well.

Cancellation/ Withdrawal of Registration

[Clauses 4,7] **(w.e.f 1.04.2022)**

- Order shall be passed **within six months from the end of the quarter** in which the first notice is issued by the PCIT (after 1.4.2022)

- Explanation below section 12AB(5) defines **Specified Violation** to cover following cases:

  - Income applied other than for the objects of the trust;
  - PGBP income earned not incidental to objectives of trust;
  - Separate book of account not maintained for incidental business;
  - Income applied for private religious purposes;
  - Income applied for the benefit of any particular religious community;
  - Any activity carried on is not genuine;
  - Any activities carried on is not in accordance with condition subject to which registration was granted;
  - Non-compliance of any other laws as are material for purpose of achieving objects by the trust, which is not disputed or attained finality

Cancellation/ Withdrawal of Registration

[Clauses 4,7] **(w.e.f 1.04.2022)**

- **Similar provisions** for cancellation of approval proposed to be inserted in respect of **Category 1** cases by way of substitution of fifteenth proviso to section 10(23C)

Cancellation/ withdrawal- consequential amendment in sec. 143(3) & 153

[Clauses 4,7, 40, 48] **(w.e.f 1.04.2022)**

- Presently, first proviso to section 143(3) provides that in, inter alia, **Category 1** cases, no assessment order shall be made denying exemption, unless AO intimates the prescribed authority about contravention of section 10(23C) and the approval of the trust is rescinded by the prescribed authority

- Consequentially, clause (iii) of Explanation to section 153 provides for exclusion of period from the date of intimation by AO to prescribed authority upto date of receipt of order rescinding approval, for computing limitation for completion of assessment

- Third proviso to section 143(3) provides that notwithstanding the first proviso, no benefit of exemption shall be given if proviso to section 2(15) becomes applicable

- Vide the Finance Bill, 2022, it is proposed to remove reference of Category 1 cases from first proviso, and omit third proviso to section 143(3) of the Act

Cancellation/ withdrawal- consequential amendment in sec. 143(3) & 153

[Clauses 4,7, 40, 48] **(w.e.f 1.04.2022)**

- A proviso (second) is proposed to be inserted to provide that where the AO is satisfied that the trusts in Category 1 or Category 2 has committed specified violations, he shall send a reference to PCIT for withdrawal of approval; and

  AO must not make assessment without giving effect to order passed by such PCIT u/s 12AB(4) or 15th proviso to section 10(23C) of the Act

- Consequential amendment is proposed by inserting clause (xiii) in Explanation to section 153 to exclude period commencing the date on which the AO makes reference to PCIT and ending with date when order of PCIT is received by the AO

Accumulations of unutilized amount

[Clauses 4, 5] **(w.e.f 1.04.2023)**

- For **Category 2** cases, the amounts short spent/ applied vis-à-vis 85% of income is allowed to be accumulated u/s 11(2) for maximum period of 5 years
- As per section 11(3), if the aforesaid accumulated is not utilized for charitable purpose in the prescribed period, the unutilized accumulation is taxed in the year immediately following the year of expiry

  For illustration, if amount was accumulated for 5 year and the same remains unutilized until year 5, the unutilized amount shall be deemed to be income of year 6
- Aforesaid section 11(3) is amended to provide for taxation of unutilized accumulated amount in the last year of permissible accumulation. In the aforesaid illustration, unutilized amount is taxed in year 5 itself
- In effect, the amendment has preponed the tax liability by one year. The amendment is proposed align cases of Category 1 & Category 2

Accumulations of unutilized amount

[Clauses 4, 5] **(w.e.f 1.04.2023)**

- Presently for **Category 1** cases, accumulation of amounts short spent/ applied vis-à-vis 85% of income is permissible for maximum of 5 years without any conditions [third proviso to sec. 10(23C)]

- In order to align the aforesaid with section 11(2) which is applicable for Category 2 cases, Explanation 3 is proposed to be inserted to 3rd proviso of section 10(23C), which provides that aforesaid accumulation is permitted subject to following conditions:

  - Furnishing of prescribed form specifying the purpose and period of accumulation (like Form 10 for Category 2 cases);
  - Aforesaid form/ statement to be furnished on or before due date specified u/s 139(1);
  - Accumulated money is invested in modes specified u/s 11(5).

Accumulations of unutilized amount

[Clauses 4, 5] **(w.e.f 1.04.2023)**

- Period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded in computing 5-year period of accumulation (proviso to Explanation 3 supra)

- Explanation 4 to third proviso of section 10(23C) is proposed to be inserted to provide that aforesaid accumulated income shall be deemed to be income in the following previous years [*pari materia to 11(3)*]:

  - Where income applied for other than object: year of such application
  - Where it remains to be invested in modes specified in section 11(5): year of such default
  - Where income unutilized till last year of accumulation: last year of accumulation
  - Where accumulated income is credited or paid to other trusts: year of such credit/ payment

Accumulations of unutilized amount

[Clauses 4, 5] **(w.e.f 1.04.2023)**

- Explanation 5 to third proviso of section 10(23C) is proposed to be inserted which provided that the AO can, on request of the assessee, allow use of accumulated funds, for purposes other than those specified when amount was set apart (but cannot allow credit/ payment to other trust) [*pari materia to 11(3A)*]

Section 115TD (Exit Tax) made applicable to 10(23C) trusts/ institutions

[Clauses 31, 32, 33] **(w.e.f 1.04.2023)**

- Presently, for **Category 2** cases, section 115TD seeks to levy tax at maximum marginal rate on 'accreted income' of trust/ institution in, inter alia, case where the charitable trust converts into any form which is not eligible for grant of registration (popularly known as exist tax)

- Section 115TE provides for interest on delayed payment of aforesaid exit tax; while section 115TF deems the trust to be in default for non-payment/ delayed payment of exit tax

- Amendments have been proposed in aforesaid sections to make them applicable to **Category 1** trusts/ institutions also

Return of income

[Clauses 4] **(w.e.f 1.04.2023)**

- For Category 2 cases, benefit of exemption u/s 11/12 is not available if return is not furnished u/s 139(4A) within time allowed under that section [refer section 12A(1)(ba)]

- Similar provision is proposed to be inserted for Category 1 trusts/ institutions by way of insertion of 20th proviso to section 10(23C)

Allowing certain expenditure in case of denial of exemption

[Clauses 4, 8] **(w.e.f 1.04.2023)**

❖ Vide the Financial Bill, it is proposed to provide that where taxable income is computed denying exemption to the two categories of trust due to– (a) applicability of proviso to section 2(15); (b) non furnishing of mandatory audit report or maintenance of books of accounts; or (c) non furnishing of return u/s 139(4A), the income shall be computed:

- After allowing deduction of expenditure incurred in India for objects of the trust, subject to following:
  - ✓ expenditure not being capital expenditure
  - ✓ expenditure is not from corpus (closing of immediately preceding year)
  - ✓ expenditure is not from any loan or borrowing
  - ✓ claim of depreciation is not in respect of asset, acquisition of which has been claimed as application in any year
  - ✓ expenditure is not in the form of any contribution or donation

Allowing certain expenditure in case of denial of exemption

[Clauses 4, 8] **(w.e.f 1.04.2023)**

[refer proposed sub-section (10) to section 13 (Category 2) and 22nd proviso to section 10(23C) (Category 1)]

- Provisions of sections 40(a)(ia) and 40A(3)/(3A) shall apply

[refer Explanation to section 13(10)/ 22nd proviso to section 10(23C)]

- no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any other provisions

[refer proposed sub-section (11) to section 13 (Category 2) and 23rd proviso to section 10(23C) (Category 1)]

Denial of exemption only to the extent of violations

[Clauses 4, 8] **(w.e.f 1.04.2023)**

- Provisions of section 13(1)(c) proposed to be amended to provide that exemption shall be denied only qua **'such part of income'** as is utilized for benefit of specified person.

  Thus, only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income

- Similar amendment in section 13(1)(d) to provide that only amount invested in violation of section 11(5) shall be deemed to be income

Denial of exemption only to the extent of violations

[Clauses 4, 8] **(w.e.f 1.04.2023)**

Comments/ Observations:

- The aforesaid amendment reaffirms the position that entire exemption cannot be denied, income only to the extent of violations can be taxed [refer *CIT v. Fr. Mullers Charitable Institutions: 363 ITR 230 (Kar.)- Revenues SLP dismissed in 363 ITR 230, CIT v. Working Women's Forum: 365 ITR 353 (Mad.)- Revenue's SLP dismissed in 235 Taxman 516 and other decisions*].

- Whether the aforesaid beneficial amendment, even though specifically made applicable from 1.4.2023, apply retrospectively?

Taxation of certain income at special rates

[Clauses 4, 8, 28] **(w.e.f 1.04.2023)**

- Section 115-BII is proposed to be introduced to provide that 'specified income' of the trusts (Category 1 and Category 2) shall be **taxed @ 30%**

- **No** deduction in respect of any **expenditure or** allowance or set off of any **loss** is proposed to be allowed

- Specified income is defined to mean:

  "(a) income accumulated or set apart in excess of fifteen per cent. of the income where such accumulation is not allowed under any specific provision of this Act; or

  (b) deemed income referred to in Explanation 4 to the third proviso to clause (23C) of section 10, or sub-section (1B) or sub-section (3) of section 11; or

Taxation of certain income at special rates

[Clauses 4, 8, 28] **(w.e.f 1.04.2023)**

contd……

(c) any income, which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of the third proviso of clause (23C) of section 10, or not to be excluded from the total income under the provisions of clause (d) of sub-section (1) of section 13; or

(d) any income which is deemed to be income under the twenty-first proviso to clause (23C) of section 10 or which is not excluded from the total income under clause (c) of sub-section (1) of section 13; or

(e) any income which is not excluded from the total income under clause (c) of sub-section (1) of section 11."

Voluntary Contributions for renovation of temples, mosques, gurudwaras, church etc

[Clauses 4, 5] **(w.r.e.f 1.04.2021)**

- Explanation 3A in section 11(1) is proposed to be inserted to provide that where any sum is received by trust or institution as voluntary contribution for purpose of renovation or repair of any temple, mosque, gurdwara, church or other place notified u/s 80G(2)(b) held by the trust, such contribution may, at the option of the recipient trust, be treated as forming part of the corpus subject to the conditions that such corpus is:
  - applied for purpose it was received and
  - not donated to any person;
  - maintained in a separately identifiable manner;
  - invested or deposited in modes specified u/s 11(5).
- On violation on any of the aforesaid condition, sum shall be deemed as income in year of violation (Explanation 3B to section 11(1))
- Identical provisions proposed for Category 1 trusts [Explanation 1A and 1B to third proviso to section 10(23C)]

Application allowed on payment basis

[Clauses 4, 5] **(w.e.f 1.04.2022)**

- It is proposed to insert Explanation 3 to clause 10(23C) and Explanation to section 11 to provide that application is allowable only in year of actual payment of sum/ expenses, irrespective of method of accounting

Comments/ Observations:

- Expenditure allowed as application only on cash basis.
- Since expenditure is now allowable on payment basis, the trust can also consider income on receipt basis?
- Though the amendment only provides for allowance of expenditure on payment cases, the trusts/ institutions can be advised to maintain book of account on cash basis instead of mercantile basis?

PENALTY AND PROSECUTION

Rationalization of sections 271AAB, 271AAC and 271AAD

[Clause 73, 74 & 75] **(w.e.f. 01.04.2022)**

- The existing provisions of section 271AAB, 271AAC and 271AAD of the Act contain provisions which give powers to the Assessing Officer to levy penalty in below cases:
  - Section 271AAB- Penalty where search has been initiated
  - Section 271AAC- Penalty in respect of certain income (Section 68, 69 etc.)
  - Section 271AAD- Penalty for false entry, etc., in books of account
- While the Assessing officer has powers to levy penalty in the above cases, such powers have not been granted to Commissioner (Appeals).
- Contrary to the above, for penalties under section 270A, section 271, section 271A, section 271AA, section 271G, section 271J which deal with deliberate concealment, non-disclosure and omission by an assessee to evade tax, Commissioner (Appeals) has parallel powers with Assessing Officer to levy penalty in eligible cases.

Rationalization of sections 271AAB, 271AAC and 271AAD

[Clause 73, 74 & 75] **(w.e.f. 01.04.2022)**

- It is proposed to grant powers to Commissioner (Appeals) to levy penalty under sections 271AAB, 271AAC, 271AAD.

Comments / Observations :

- The above proposal has been brought in to discourage assessees against tax evasion and prevent non-compliance.

- The amendment is also intended to remove handicap for CIT(A) to impose penalty on income enhanced during appellate proceedings in a case where search was initiated.

Amendment in the provisions of section 272A of Act

[Clause 78] **(w.e.f. 01.04.2022)**

- The levy of penalty of INR 100 every day for failure to furnish information, returns or statements, allow inspections, etc. provided in sub-section (2) of section 272A of the Act is proposed to be increased to INR 500 per day.
- While there continues an upper cap for penalty to not exceed the amount of tax deductible or collectible in relevant cases, the aforesaid increase in penalty would encourage deductors to furnish TDS/ TCS returns, issue TDS/ TCS certificates, etc. on a timely basis, leading to reduction in tax credit mismatches and creation of frivolous demands while processing of tax returns of deductees.

Offences and Prosecutions under Chapter XXII of the Act

[Clauses 77, 79, 80, 82 and 83] **(w.e.f. 01.04.2022)**

- By virtue of section 269UP, provisions of Chapter XX-C 'Purchase by Central Government of Immovable Properties in certain cases of transfer' were made inapplicable w.e.f 1.4.2002

- Section 276AB provides for prosecution for failure to comply with certain provisions of the aforesaid Chapter (section 269UC/UE and UL of the Act)

- Considering that the provisions were made inapplicable way back since 2002, it is proposed to insert a sunset clause in section 276AB of the Act to provide that no fresh prosecution shall be initiated thereunder on or after 1.4.2022

Offences and Prosecutions under Chapter XXII of the Act

[Clauses 77, 79, 80, 82 and 83] **(w.e.f. 01.04.2022)**

- Section 276B provides for prosecution in case of failure to pay tax **deducted** at source; while section 276BB of the Act provides prosecution for failure to pay tax **collected** at source.

- Presently, section 278A provides for punishment in case of second/ subsequent offences, inter alia, covered u/s 276B of the Act. The former section does not make reference to section 276BB despite offences being of nature similar to section 276B of the Act. Thus, amendment is proposed to include reference to section 276BB in section 278A of the Act.

- Section 278AA provides that punishment shall not be imposed u/s 276B of the Act if failure to pay deducted tax is on account of reasonable cause. Reference to section 276BB of the Act is added to the said section; Thus, no punishment shall be imposed if failure to pay tax collected is on account of reasonable cause.

MISCELLANEOUS

Incentives to National Pension System subscribers for State Government Employees

[Clause 20] **(w.e.f. 01.04.2020)**

- Section 80CCD(2) provides for deduction of employer's contribution to the New Pension System ('NPS') account of an employee, from the total income of such employee, to the extent of 10 % of his salary in the previous year.
- Vide Finance Act, 2019, the cap of 10 % was enhanced to 14% of salary where such contribution was made Central Government. However, the limit remained @ 10% of salary where such contribution was made by any other employer.
- Subsequently, the State Governments were given an option to raise the contribution to 14% w.e.f., 01.04.2019 on their own volition, based on their own internal approvals and notifications, without seeking the approval of the Pension Fund Regulatory and Development Authority.

Incentives to National Pension System subscribers for State Government Employees

[Clause 20] **(w.e.f. 01.04.2020)**

- In order to ensure that the State Government employees also get full deduction of the enhanced contribution by the State Government, it is proposed to increase the limit of deduction under section 80CCD of the Act from the existing 10% to 14% of salary in respect of contribution made by the State Government to the account of its employees.

Comment / Observations:

- Enhances the social security benefits of the state government employees and bring them at par with central government employees.

- However, for private sector employees, the exiting limit 10% continues to apply.

Condition of releasing of annuity to a disabled person

[Clause 21] **(w.e.f. 01.04.2023)**

- Section 80DD, *inter alia,* provides for a deduction to an individual or HUF, who is a resident in India, in respect of (a) expenditure for the medical treatment (including nursing), training and rehabilitation of a dependent disabled; or (b) amount paid to LIC or any other insurer or administrator or specified company in respect of a scheme for maintenance of a disabled dependent.

- Sub-section (2) provides that the deduction shall be allowed only if the payment of annuity or lump sum amount is made to the benefit of the disabled dependent, in the event of the death of the individual or the member of HUF in whose name subscription to the scheme has been made **(Individual/HUF member subscriber** who is generally the parent/legal guardian of disabled dependent**)**.

Condition of releasing of annuity to a disabled person

[Clause 21] **(w.e.f. 01.04.2023)**

- Sub-section (3) provides that if the disabled dependent predeceases the Individual/ HUF member subscriber, then the amount deposited in such scheme shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee.

- In the case of **Ravi Agrawal vs. UOI and Anr.: WP(c) No. 1107 of 2017**, a PIL was filed before the apex Court on the ground that denial of benefit of insurance to the handicapped persons to get annuity or lumpsum amount during the lifetime of the parent/guardian of such a handicapped person violates Article 14 of the Constitution of India since the beneficiaries of other life insurance policy were eligible for getting annuity during the lifetime of the person who has taken insurance policy.

Condition of releasing of annuity to a disabled person

[Clause 21] **(w.e.f. 01.04.2023)**

- The Court observed that object of section 80DD is to secure the future of the persons suffering from disability, namely, after the death of the parent/guardian, however, the Court noted that "*there could be harsh cases where handicapped persons may need the payment of annuity or lump sum basis even during lifetime of their parents/guardians*." and thus, the Centre may consider suitable amendment in section 80DD.

- In order to remove this genuine hardship and allow benefit of deduction even during the lifetime of Individual/HUF member subscriber, it is proposed to amend section 80DD(2) of the Act to also allow the deduction under that section where Individual/HUF member subscriber has attained the age of 60 years or more and where payment or deposit has been discontinued.

Condition of releasing of annuity to a disabled person

[Clause 21] **(w.e.f. 01.04.2023)**

- Further, it is proposed to insert a new sub-section (3A) to provide that amount received by the dependent disabled, before his death, by way of annuity or lump sum, shall not be taxable under section 80DD(2).

Comment / Observations:

- Currently deduction is available only if the annuity or the lump sum is receivable after the death of the individual/HUF subscriber. This has been relaxed to extend the deduction even if such sum is received during the lifetime of the subscriber on attaining the age of 60 years, provided the payment to the scheme has been discontinued.

- Thoughtful step to enhance independence of disabled persons.

Exemption of amount received for medical treatment and on death due to Covid 19

[Clause 10 and 16] **(w.r.e.f. 01.04.2020)**

- CBDT vide Press Release dated 25.06.2021, announced much needed tax relief in the form of income-tax exemption in respect of financial assistance received for meeting medical expenses incurred and assistance in the form of ex-gratia payment received by family member(s) of a deceased person:

- The aforesaid relief is proposed to be incorporated in the Act itself by amending the provisions of section 56(2)(x) of the Act to exclude the receipt of such payment from the ambit of 'income from other sources'. Similarly, section 17(2) of the Act is also proposed to be amended to provide that such payments received from the employer would not qualify as perquisite.

Exemption of amount received for medical treatment and on death due to Covid 19

[Clause 10 and 16] **(w.r.e.f. 01.04.2020)**

- **Section 56(2)(x)** of the Act *inter alia* brings to tax any amount received by a person without consideration if aggregate of such amount exceeds Rs.50,000. However, certain exceptions have been provided in the clause for transaction specified therein.

- In order to provide the relief promised in the Press Release, the following clauses are proposed to be inserted in the proviso occurring after item (B) in sub-clause (c) of section 56(2)(x) of the Act to provide that the said section shall not apply to:

  - Any amount (without any limit) received by an individual **from any person towards expenses actually incurred on medical treatment** of his or family member for COVID-19 related illness, subject to conditions as may be notified by CG. (**Clause XII)**

Exemption of amount received for medical treatment and on death due to Covid 19

[Clause 10 and 16] **(w.r.e.f. 01.04.2020)**

- Following amounts received by family member of deceased on account of death due to illness relating to Covid-19, subject to conditions as may be notified by CG.

S. No.	Particulars	Monetary limit
(i)	Amount received from **employer of deceased**	**No limit**
(ii)	Amount received from **any other person(s)**	**Rs. 10 lakh**

❖ Such sum should be received within 12 months from the date of death (**Clause XIII)**

Exemption of amount received for medical treatment and on death due to Covid 19

[Clause 10 and 16] **(w.r.e.f. 01.04.2020)**

- Family" in relation to an individual shall have the same meaning as assigned in the Explanation 1 to section 10(5) of the Act.

- **Clause (2) of section 17 of the Act** provides the definition of "perquisite" and first proviso thereto provides certain exclusions which shall not qualify as "perquisite".

- It is proposed to amend the clause (ii) of the proviso to insert a new sub-clause (c) to provide that any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any family member in respect of any illness relating to COVID-19 shall not constitute 'perquisite', subject to conditions as may be notified by CG.

Exemption of amount received for medical treatment and on death due to Covid 19

[Clause 10 and 16] **(w.r.e.f. 01.04.2020)**

Comment / Observations:

- Recipient may have to keep record of expenses incurred along with supporting documents; especially considering that major expenses may have been incurred on home treatment and/ or on expenses incurred in cash towards booking of ambulance, procurement of oxygen cylinders, life-saving drugs, etc., in order to claim exemption?

- Whether the limit of Rs.10 lakhs in respect of financial assistance received by the family members of deceased from well-wishers is to be counted separately in respect of each deceased person, in cases where the same family lost more than one member due to Covid-19?

Withdrawal of exemption under section 10(8), (8A), (8B) and (9)

[Clause 4] **(w.e.f. 01.04.2022)**

- The existing provisions provide for exemption with respect to the income of individuals who are assigned to duty in India under any co-operative technical assistance programs or projects.

- These technical assistance programs / projects are undertaken as per the agreement entered between Indian government and government of foreign state.

- The exemption is granted with respect to the
  - remuneration / fee received by the individual from foreign state to discharge duties in India and
  - income accruing or arising outside India in respect of which income or social security tax has been paid in the foreign state by such individual. [Section 10(8)]

Withdrawal of exemption under section 10(8), (8A), (8B) and (9)

- The exemption is also extended to the income accruing or arising outside India to such consultant or their employee or family members accompanying such consultant or employee provided income or social security tax has been paid in their respective foreign state. [Section 10 (8A) and (8B) and (9)]

- It is proposed to withdraw the aforementioned exemptions from Assessment Year 2023-24 (i.e. 01.04.2022).

Withdrawal of exemption under section 10(8), (8A), (8B) and (9)

- The exemptions are proposed to be withdrawn in line with the policy of the Government to phase out exemptions and tax incentives for simplification of tax laws.

- Pertinently, the Shome Committee recommended withdrawal of the exemption since there was no economic rationale for the exemption and that several countries tax such income.

- The proposed amendment shall result in income of aforementioned individuals being taxable in India.

- The individuals may, however, claim relief, with respect to the taxes paid in India, in their country of residence

Widening the scope of reporting by producers of cinematograph films or persons engaged in specified activities

[Clause 84] **(w.e.f. 01.04.2022)**

- Under the existing provisions of section 285B of the Act, the producer of cinematographic films is required to furnish a statement containing particulars of all payments over Rs.50,000/- made by him or due from him to each person engaged by him. Such statement is to be furnished in prescribed Form 52A and within 30 days from the end of the FY or from the date of completion of the film, whichever is earlier.

- It is proposed to substitute section 285B to widen the scope of that section and extend the reporting requirements to persons engaged in "specified activities" which would mean event management, documentary production, production of programs for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other activity as the CG may specify by passing notification in the Official Gazette.

Refund of TDS deducted u/s 195, where tax borne by the payer

[Clauses 66, 68, 69] **(w.e.f. 01.04.2022)**

- New section 239A is proposed to be inserted to provide that where due an arrangement/ agreement in writing, the payer is required to bear tax deductible u/s 195 of the Act, he may having paid such tax, make an application before the AO for refund of the same if tax was not required to be deducted

- The application must be made within 30 days of payment of tax

- The AO may allow or reject the application after conducting requisite enquiries and granting opportunity of bearing heard to the applicant

- The order passed by AO is appealable before the CIT(A) u/s 246A of the Act

Refund of TDS deducted u/s 195, where tax borne by the payer

[Clauses 66, 68, 69] **(w.e.f. 01.04.2022)**

- Presently, such person denying its liability of deduct taxes is required to approach the first appellate authority [CIT(A)] under section 248 for appropriate relief after payment of taxes.

- With proposed insertion of section 239A and consequential amendment in section 246A, the aforesaid section 248 of the Act is made inapplicable in respect of taxes paid after 1.4.2022.

Comments/ Observations:

- A welcome step proposing to allow filing of refund application before the AO instead of direct appeal before the CIT(A)

Amendment in the provisions of section 179 of Act

[Clause 55] **(w.e.f. 01.04.2022)**

- The existing provisions of section 179 of the Act imposes liability on directors for payment of tax dues in cases where such amounts cannot be recovered from the Company itself. While the present provisions contains no requirement or condition of such private company being in liquidation for invoking this section, the title of such section reads as 'Liability of directors of private company **in liquidation**'.
- The Explanation to the section provides that tax dues as referred to in the main section shall include penalty, interest or any other sum payable under the Act.
- The Finance Bill proposes to remove the words 'in liquidation' from the title to ensure uniformity with the provisions of the section.
- Further, it has been proposed to specifically include "fees" in the scope of the expression "tax due" to avoid unnecessary litigation.

Amendment in the provisions of section 179 of Act

[Clause 55] **(w.e.f. 01.04.2022)**

Observations/ Comments:

- Some courts had earlier interpreted that the phrase 'tax due' shall not include penalty, interest and other sums payable under the Act. The Explanation to Section 179 was therefore inserted by the Finance Act 2013 to define the scope of 'tax due' to include penalty, interest, etc.,
- Now the clarification provides that 'tax dues' shall include fees to avoid any further litigation.
- With respect to applicability of section 179 on private limited companies (not in liquidation), the **Allahabad High Court** in the case of **Roop Chandra Sharma [1998] 229 ITR 570** held that notwithstanding the misleading heading of section 179, the directors of a private company though not under liquidation, may be liable for the dues outstanding against the company (also refer **Union of India v. Manik Dattatreya Lotlikar [1988] 172 ITR 1 (Bombay HC)]**.

Amendment under section 119

[Clause 34] **(w.e.f. 01.04.2022)**

- Section 234F of the Act provides for payment of fee of Rs.5000 in case a person fails to furnish return of income u/s 139 within the prescribed time

- Section 119 of the Act empowers the Board to issue orders, instructions and directions to other income-tax authorities for proper administration of the Act

- It is proposed to include section 234F of the Act in the list of sections mentioned under clause (a) of sub section (2) of the section 119, so as to enable CBDT to issue orders or instructions for relaxation in genuine cases of failure to furnish return in prescribed time

IT Authority for section 133A defined

[Clauses 37] **(w.e.f. 01.04.2022)**

- Section 133A of the Act grants an income-tax authority power of survey as mentioned in that section.

- Explanation to section 133A of the Act is proposed to be amended to provided that 'income tax authority' shall be sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by the Board.

IT Authority for section 133A defined

[Clauses 37] **(w.e.f. 01.04.2022)**

- Section 133A of the Act grants an income-tax authority power of survey as mentioned in that section.

- Explanation to section 133A of the Act is proposed to be amended to provided that 'income tax authority' shall be sub-ordinate to Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by the Board.

INDIRECT TAXATION

CUSTOMS

LEGISLATIVE CHANGES IN THE CUSTOMS ACT, 1962

Proper officer related

[Clause 85 and Clause 86]

Amendment to Section 2(34) of the Customs Act (application with retrospective effect): The definition of proper officer has been amended to include such officers who have been assigned a particular function under section 5 of Act.

Substitution of Section 3 of the Customs Act *vide* Clause 86 of the Bill (application with retrospective effect):

–The classes of customs officers have been amended to include the officers of Directorate General of Revenue Intelligence (DRI), audit and preventive formation.

–Broad powers have been provided by way of sub-clause k of the section, which classifies "such other class of officers of customs as may be appointed for the purposes of the Act" within the purview of the definition of the officers under the Act.

Proper officer related

[Clause 87]

Amendment to Section 5 of the Customs Act (application with retrospective effect):

- The Central Board of Indirect Taxes ("the Board") & the Principal Commissioner/Commissioner of Customs have been granted the powers to assign any such function as they may deem fit to an officer of customs, who will be the proper officer for such function.
- Broad criteria has been created for the Board to assign such functions in the form of an illustrative list including computer based assignment for faceless assessment.
- Two officers can be assigned a concurrent jurisdiction over a particular function by the Board, irrespective of their class.

Proper officer related

[Clause 87]

Amendment to Section 5 of the Customs Act (application with retrospective effect):

– A conjoint reading of Section 3 along with Section 5 of the Act gives out the impression that the amendments have been made to create an express provision under the Act, to make DRI a proper officer, thereby nullifying the ratio of the judgment of Hon'ble Supreme Court in the case of **M/s Canon India Private Limited Vs Commissioner of Customs** report ed in **TS-75-SC-2021-CUST**.

Valuation related

[Clause 88]

Amendment to Section 14 of the Act:

- Additional obligations on the part of the importers can be specified by the Board in relation to a class of imported goods, in case the Board has reasons to believe that there has been an undervaluation in the declared value of such imported goods.
- It appears that the objective is to put an onus of proof on the importer in specific cases where there is any reason to believe that there have been undervaluation. This is over and above the rule 12 of CVR, 2007 requirement of reason to doubt which has been held as a stricter benchmark with respect to valuation of imported goods. Needs to be seen whether this satisfies the WTO requirement in relation to valuation.
- This also seems to legislatively overrules a number of recent Tribunal decisions where valuation in terms of DGOV circulars were held to be bad in law.

Advance ruling

[Clause 89]

Amendment to Section 28E of the Act:

– This section has been amended to omit sub-clause and explanation pertaining to the definition of joint ventures, non-resident, Indian company and foreign company.

[Clauses 90, 91 and 92]

Amendment to Section 28H, 28I and 28J of the Act

– **Section 28H:** Changes have been made to provide for powers to prescribe amount of fees along with the application for advance. Further, the application can now be withdrawn at any time before an advance ruling is pronounced.
– **Section 28I:** Requirement of the advance ruling being signed by all the members of the advance authority has been dispensed away with.
– **Section 28J:** The advance rulings granted under the Act will be binding upon the applicant only from the earlier of the date on which the law or facts pertaining to such ruling have been amended or up to three years from the date of pronouncement of such advance ruling. Prior to the amendment, the advance ruling was binding upon the applicant only up to the date when the law or facts pertaining to such advance ruling were amended.

Miscellaneous

[Clause 93]

Introduction of Section 110AA

In line with proper officer related amendments, if in respect to any particular function, there is a subsequent investigation or enquiry, then the proper officer who has been assigned such functions by the board shall have the primary jurisdiction in respect of any subsequent functions arising by way of such investigation or enquiry.

[Clauses 94 and 95]

Section **135AA** has been introduced in light of protection of data submitted to the Customs Authority. Said provision also makes any unauthorized publication (publication in the absence of an order from Court/Tribunal) of such data to the general public a punishable offence with a term of imprisonment up to 6 months of a fine of Rupees fifty thousand, or with both.

Cognizance of the abovementioned offence under **Section 137** may not be taken without the previous sanction of the Principal Commissioner/Commissioner of Customs.

Miscellaneous

[Clause 93]

Introduction of Section 110AA

[Clause 96]

Validation of Actions: Actions taken up prior to the introduction of the Bill relating to certain Chapters in the Act will hold their validity pursuant to the introduction of the Bill – in line with proper officer related amendments

LEGISLATIVE CHANGES IN THE CUSTOMS TARIFF ACT, 1975

Tariff related changes

[Clause 97]

Changes in two tranches:

- Changes with effect from 02.02.2022; and
- Changes with effect from 01.05.2022 with a view to harmonise certain entries with Harmonised System of Nomenclature to create new tariff lines in respect of certain entries and to revise the rates in respect of certain tariff items

Important changes:

1. Circular clarifying non-applicability of SWS;
2. Increase in Tariff rate for project import.

LEGISLATIVE CHANGES IN THE CUSTOMS (IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY) RULES, 2017

IGCR Rules

- Amendment in Rule 3 (Definitions) to define common portal, customs automated system and date of import;
- Rule 4: Process related to furnishing IGCR-1 has been automated. FORM IGCR-1 has been introduced at the common portal whereby a one-time information has to be provided by the importer. IIN to be issued on acceptance of Form.
- **Amendment in Rule 5:** ***(Procedure to be followed)*** **–** *Incorporation of IIN in BOE*
- **Amendment in Rule 6:** ***(Maintenance of Records by the importer)*** **–** Form IGCR-3 and Form IGCR-2 introduced
- **Introduction of Rule 6A:** ***(Procedure for allowing imported goods for Job-work)***
- **Introduction of Rule 6B:** ***(Procedure for allowing imported goods for unit transfer)***
- **Amendment in Rule 7:** ***(Re-export or clearance of unutilized or defective goods)***
- **Amendment in Rule 8:** ***(Recovery of duties in certain cases)***

CENTRAL GOODS AND SERVICES TAX ACT, 2017

Legislative changes

Amendments under CGST Act:

[Clause 99]

- Clause (ba) inserted to Section 16(2) to allow ITC where such credit is not restricted in the details communicated to taxpayer under Sec. 38 that provides for furnishing details of inward supplies

- Section 16(4) being amended to extend time limit for availment of ITC in respect of any invoice/ debit note pertaining to a financial year from 30th September to 30th November of following Financial Year

Legislative changes

[Clauses 100, 101]

- Clause (b) and (c) of Section 29(2) proposed to be amended to provide for cancellation of registration where-
  - i. person liable to pay tax under Sec. 10 (being composition taxpayer) has not furnished return for a FY beyond 3 months from due date of furnishing said return
  - ii. person, other than those paying tax under Sec. 10, has not furnished return for continuous tax period as prescribed
- Section 34(2) being amended to provide extended timeline for issuance of credit note in respect of supply made in a Financial Year from 30th September to 30th November of following Financial Year

Legislative changes

[Clause 102]

- Sec. 37 (Furnishing of details of outward supplies) being proposed to be amended to:
  - i. provide for prescribing conditions and restrictions for furnishing details of outward supply and for communication of details of such outward supplies to concerned recipients
  - ii. do away with two-way communication process in return filing
  - iii. provide for extended time period of two months till (30th November from 30th September) for rectification of error in respect of details of outward supplies furnished under sub-sec (1)
  - iv. provide for tax period-wise sequential filing of details of outward supplies under sub-sec (1)

Legislative changes

[Clause 103]

- Section 38 - Furnishing details of inward supplies being substituted for prescribing manner, conditions and restrictions for communication of details of inward supplies and ITC to recipient by means of auto-generated statement by doing away with two-way communication process in return filing

[Clause 104]

- Section 39 (Furnishing of returns) being amended:
  - i. non-resident taxable person to furnish return for a month by 13th day of following month
  - ii. option to person furnishing return under sub-sec (1) to pay either self assessed tax or amount that may be prescribed
  - iii. provide extended time upto 30th Nov of following FY, for rectification of errors in return
  - iv. provide for furnishing details of outward supplies of a tax period u/s. Section 37(1) as a condition for furnishing return under Section 39 for said tax period

Legislative changes

[Clauses 105, 106]

- Section 41 providing for claim of input credit and provisional acceptance thereof being substituted by providing for availment of self-assessed ITC subject to prescribed conditions and restrictions
- Sections 42, 43 and 43A providing for matching, reversal and reclaim and procedure for furnishing of return being omitted

Legislative changes

[Clauses 107 & 109]

- Section 47 being amended to provide for late fee for delayed filing of return under section 52
- Section 49 underlining payment of tax, interest & penalty etc. being amended to:
  i. provide for prescribing restrictions for utilizing amount available in electronic cash ledger
  ii. allow transfer of amount in electronic cash ledger of registered person to electronic cash ledger of **distinct person**
  iii. provide for prescribing maximum proportion of output tax liability that can be discharged through electronic credit ledger

Legislative changes

[Clause 110] ***(retrospective effect from 1st July 2017)***

- Section 50(3) being substituted to provide for levy of interest where input tax credit is wrongly availed **and** utilized

[Clause 111]

- Section 52(6) being amended to provided for extended time upto 30th November of following FY for rectification of errors in statement furnished by e-commerce operator under sub-sec (4)

Legislative changes

[Clause 112]

Section 54 (filing of refund claim) being amended to:

i. provide that refund claim of balance in electronic cash ledger shall be made in form and manner as may be prescribed

ii. provide time limit for claiming refund of tax paid on inward supplies of goods/ services u/s. Section 55 (dealing with refund of taxes paid on notified supplies of goods or services) as two years from last day of quarter in which supply was received

iii. extend scope of withholding of or recovery from refunds in all types of refunds

iv. insert explanation to provide clarity regarding relevant date for filing refund claim in respect of supplies to SEZ developer/ unit

Legislative changes

[Clause 114]

- Notification No. 09/2018-CT dated 23.01.18 being amended to notify www.gst.gov.in as common electronic portal for all functions provided under CGST Rules, 2017, other than those provided for e-way bill and for generation of invoices under rule 48(4)

[Clause 115]

- Notification No. 13/2017 amended to notify rate of interest under section 50(3) of CGST Act as 18% from 24% earlier.

AMENDMENTS OF GST RATE NOTIFICATIONS

Rate notifications

[Clauses 116, 119, 122]

- Provides retrospective exemption from payment of GST on supply of unintended waste generated during production of fish meal (under heading 2301), except fish oil, during period 1st July 2017 to 30th September 2019, subject to condition that if tax has been collected.
- No refund allowable in case tax has been collected

Rate notifications

[Clauses 117, 120, 123]

- Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name called by State Govt. has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service
- No refund allowable in case tax has been collected

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